

(FOR RESTRICTED CIRCULATION)

FOURTH COURSE .

ON

VIGILANCE IN URBAN AUTHORITIES
(MAY 2 - 11, 1988)

COURSE DIRECTOR
PROF.D.D. MALHOTRA

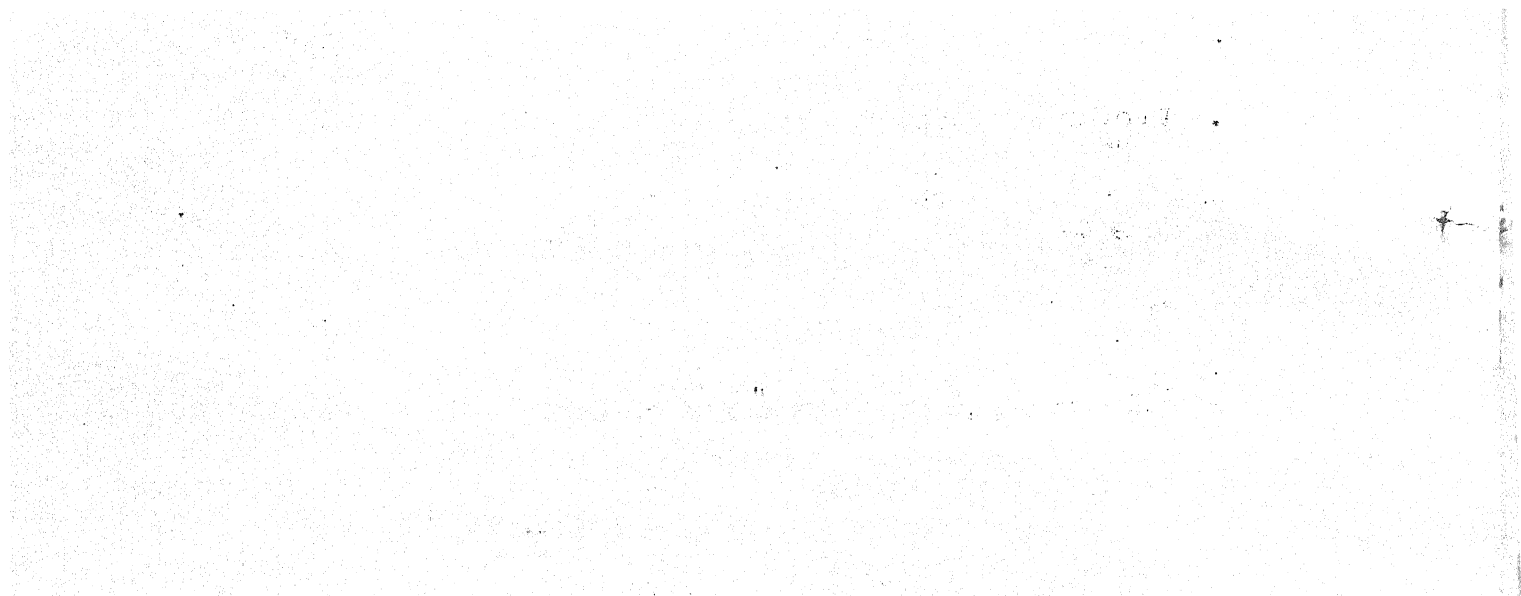
CENTRE FOR URBAN STUDIES
THE INDIAN INSTITUTE OF PUBLIC ADMINISTRATION
INDRAPRASTHA ESTATE, RING ROAD
NEW DELHI-110002

MAY 1988

1700

C O N T E N T S

1. The Possibility of Administrative Ethics	Dennis P. Thompson
2. The roots of Corruption	B.K. Nehru
3. Corruption - Its causes and Effects	Gunnar Myrdal
4. Nature of the problem	K. Santhanam
5. Preventive Measures	K. Santhanam
6. Gist of Important Circulars Issued by the Commission/Deptt. of D.P. & A.R.	
7. Complaints and their Disposal	M.K. Dixit
8. Important Case Law on "What is Misconduct"	
9. Rule of Law	H.R. Khanna
10. Judicial Control of Administrative Action	M.P. Jain & S.N. Jain
11. Importance of adhering to inquiry Procedure expressly laid down	
12. The one who Decides must hear	S.N. Jain
13. Preventive Vigilance Do's and Don'ts	Reserve Bank of India
14. Notes on Tender Acceptance Procedure	A.C. Panchdhari
15. Essential elements of Escalation Clause in contracts	A.C. Panchdhari
16. Corruption in Administration and Vigilance	U.C. Agarwal



The Possibility of Administrative Ethics*

Dennis F. Thompson

Administrative ethics assumes that individuals in organizations can make moral judgements and can be the objects of moral judgements. Two common views of administration-then administrators should either follow the policies of an organization or resign from office, and that administrators should not be held morally responsible for the wrongs of their organizations-deny these assumptions and would make administrative ethics impossible. By understanding how these views themselves are mistaken, we can see how administrative ethics is possible and what forms it should take.

Is administrative ethics possible? The most serious objections to administrative ethics arise from two common conceptions of the role of individuals in organizations-what may be called the ethic of neutrality and the ethic of structure. Both of these views must be rejected if administrative ethics is to be possible.

Administrative ethics involves the application of moral principles to the conduct of officials in organizations.¹ In the form with which we are primarily concerned here (ethics in public organizations), administrative ethics is a species of political ethics, which applies moral principles to political life more generally. Broadly speaking, moral principles specify (a) the rights and duties that individuals should respect when they act in ways that seriously affect the well-being of other individuals

* Public Administration Review, September-October, 1985, vol.45, No.5, p.555.

Contd/...

and society; and (b) the conditions that collective practices and policies should satisfy when they similarly affect the well-being of individuals and society. Moral principles require a disinterested perspective. Instead of asking how an action or policy serves the interest of some particular individual or group, morality asks whether the action or policy serves everyone's interest, or whether it could be accepted by anyone who did not know his or her particular circumstances, such as race, social class, or nationality. Moral judgements presuppose the possibility of a persons to be judged.

The most general challenge to administrative ethics would be to deny the possibility of ethics at all or the possibility of political ethics. Although a worthy challenge, it should not be the primary concern of defenders administrative ethics. Theorists(as well as practitioners when they think about ethics at all) have been so pre-occupied with general objections to ethics that they have neglected objections that apply specifically to ethics in administration. They have not sufficiently considered that even if we accept the possibility of morality in general and even in politics, we may have doubts about it in organizations.

Contd/...

To isolate more specifically the objections to administrative ethics, we should assume that the moral perspective can be vindicated and that some moral principles and some moral judgements are valid. Despite disagreement about how morality is to be justified and disagreement about its scope and content, we nevertheless share certain attitudes and beliefs to which we can appeal in criticizing or defending public actions and policies from a moral perspective.²

The more direct challenge to administrative ethics comes from those who admit that morality is perfectly possible in private life but deny that it is possible in organizational life. The challenge is that by its very nature administration precludes the exercise of moral judgment. It consists of two basic objections- the first calls into question the subject of the judgment (who may judge); the second, the object of judgment (who is judged). The first asserts that administrators ought to act neutrally in the sense that they should follow not their own moral principles but the decisions and policies of the organization. This is the ethic of neutrality. The second asserts that not administrators but the organization (and its formal officers) should be held responsible for its decisions and policies. This

Contd/.....

is ethic of structure. Each is called an ethic because it expresses certain norms and prescribes conduct. But neither constitutes an ethic or a morality because each denies one of the prusuppositions of moral judgment-either a person to judge or a person to be judged.

I. The Ethic of Neutrality

The conventional theory and practice of administrative ethics holds that administrators should carry out the orders of their superiers and the policies of the agency and the government they serve.³ On this view, administrators are ethically neutral in the sense that they do not exercise independent moral judgement. They are not expected to act on any moral principles are reflected in the orders and policies they are charged with implementing. They serve the organization so that the organization may serve society. Officials are morally obliged to serve the organization in this way because their acceptance of office is voluntary; it signifies consent. Officials know in advance what the duties of office will be, and if the duties (or their minds)change, officials can usually leave office.

Contd/...

The ethics of neutrality does not deny that administrators often must use their own judgement in the formulation of policy. But their aim should always be to discover what policy other people (usually elected officials) intend or would intend; or in the case of conflicting directives to interpret legally or constitutionally who has the authority to determine policy. The use of discretion on this view can never be the occasion for applying any moral principles other than those implicit in the orders and policies of the superiors to whom one is responsible in the organization. The ethic of neutrality portrays the ideal administrator as a completely reliable instrument of the goals of the organization, never injecting personal values into the process of furthering these goals. The ethic thus reinforces the great virtue of organization- its capacity to serve any social end irrespective of the ends that individuals within it favour.

A variation of the ethic of neutrality gives some scope for individual moral judgement until the decision or policy is "final". On this view, administrators may put forward their own views, argue with their superiors, and contest proposals in the process of formulating policy. But once the decision or policy is final, all administrators fall into line,

Contd/....

and faithfully carry out the policy. Furthermore, the disagreement must take place within the agency and according to the agency's rule of procedure. This variation puts neutrality in abeyance, but "suspended neutrality" is still neutrality, and the choice for the administrator remains to "obey or reign". 14

Three sets of criticisms may be brought against the ethic of neutrality. First, because the ethic under-estimates the discretion that administrators exercise, it impedes the accountability of administrators by citizens. The discretion of administrators goes beyond carrying out the intentions of legislator or the superiors in the organization, not only because often administrators can and should take the initiative in proposing policies and mobilizing support for them. The ethic of neutrality provides no guidance for this wide range of substantive moral decision making in which administrators regularly engage. By reinforcing the illusion that administrators do not exercise independent moral judgement, it insulates them from external accountability for the consequences of many of their decisions.

.... A second set of objections centers on the claim that office holding implies consent to the duties of office as defined by the organization. While

Contd/....

it may be easier to resign from office than from citizenship, it is for many officials so difficult that failure to do so cannot be taken to indicate approval of everything the organization undertakes. For the vast majority of governmental employees, vested rights (such as pensions and seniority) and job skills (often not transferable to the private sector) supply powerful incentives to hold on to their positions. Even if on their own many would be prepared to sacrifice their careers for the sake of principle, they cannot ignore their responsibilities to their families. Higher level officials usually enjoy advantages that make resignation a more feasible option. They can return to (usually more lucrative) positions in business or in a profession. But their ability to do so may depend on their serving loyally while in government, demonstrating that they are the good "team players" on whom any organization, public or private, can rely.

Furthermore, the dynamics of collective decision making discourage even conscientious officials from resigning on principle. Many decisions are incremental their objectionable character apparent only in their cumulative effect. An official who is involved in the early stages of escalations of this kind (such as aid increases, budget cuts, troop commitments) will find it

Contd/...

difficult to object to any subsequent step. The difference between one step and the next is relatively trivial, certainly not a reason to resign on principle. Besides, many decisions and policies represent compromises, and any would-be dissenter can easily be persuaded that because his opponents did not get everything they sought, he should settle for less than what his principles demand. For these and other reasons, an official may stay in office while objecting to the policies of government; a failure to resign therefore does not signify consent.

Proponents of the ethic of neutrality may still insist that officials who cannot fulfill the duties of their office must resign, however difficult it may be to do so. But as citizens we should hesitate before endorsing this as a general principle of administrative ethics. If this view were consistently put into practice, public offices would soon be populated only by those who never had any reason to disagree with anything the government decided to do. Men and women of strong moral conviction would resign rather than continue in office, and we would lose the services of the persons who could contribute most of public life.

Because we do not want to drive persons of principle from office, we should recognize that there may be good moral reasons for staying in office even while

Contd/...

disagreeing with the policies of the government. This recognition points to a third set of objections to the ethic of neutrality--that it simplifies the moral circumstances of public office. It tends to portray officials as assessing the fit between their moral principles and the policies of the organization, obeying if the principles and policies match, resigning if they diverge too much. What is important on this view is that in resigning, the individual express "ethical autonomy", which Weisband and Franck, in their otherwise valuable plea for resignations in protest, define as "the willingness to assert one's own principled judgement, even if that entails violating rules, values, or perceptions of the organization, poor groups or team".⁶ "The social importance of ethical autonomy", they write, "lies not in what is asserted but in the act of asserting." The ethic of neutrality encourages this and similar portrayals of an isolated official affirming his or her own principles against the organization at the moment of resignation. The ethic thereby administrator should take into account in fulfilling the duties while in office.

First of all, as an official you have obligations to colleagues, an agency, and the government as a whole

Contd/....

By accepting office and undertaking collective tasks in an organization, you give others reasons to rely on your continued cooperation. Your colleagues begin projects, take risks, make commitments in the expectation that you will continue to play your part in the organization. If you resign, you disappoint these expectations, and in effect break your commitments to your colleagues. A resignation may disrupt many organizational activities, some of which may be morally more important than the policy that occasions the resignation. Presidential Assistant Alexander Haig deployed this kind of argument in October 1973 in an effort to persuade Attorney-General Elliot Richardson to fire Special Prosecutor Archibald Cox. Richardson claimed that he would resign rather than dismiss Cox. Haig argued that resignation or disobedience at this time would jeopardize the president's efforts, which were at a critical stage, to reach a peace settlement in the Middle East.⁷ The argument understandably did not convince Richardson (his commitment to Congress and Cox were too clear, and the connection between his resignation and the Middle East settlement too tenuous), but the form of the argument Haig invoked was sound. An official must consider his commitments to all of his associates in government and the effect of his intended

Contd/...

on the conduct of government as a whole. Officials also have more general obligations to the public. Officials should not decide simply whether they can in good conscience continue to associate themselves with the organization. This could be interpreted as merely wanting to keep one's own hands clean- a form of what some have called "moral self-indulgence."⁸

A third way in which the ethic of neutrality distorts the duties of public administrators is by limiting their courses of action to two-obedience or resignation. Many forms of dissent may be compatible with remaining in office, ranging from quiet protest to illegal obstruction. Some of these, of course may be morally wrong except under extreme circumstances, but the ethic of neutrality provides no guidance at all here because it rules out, in advance, the possibility of morally acceptable internal opposition to decisions of the organization, at least "final decisions."

The problem, however, is how we can grant officials scope for dissent without undermining the capacity of the organization to accomplish its goals. If the organization to accomplish its goals. If the organization is pursuing goals set by a democratic public, individual dissent in the organization may subvert the democratic process. We should insist, first of all, that would-be

Contd/.....

dissenters consider carefully the basis of their disagreement with the policy in question. Is the disagreement moral or merely political? This is a slippery distinction since almost all important political decisions have moral dimensions. But perhaps we could say that the more directly a policy seems to violate an important moral principle (such as, not harming innocent persons), the more justifiable dissent becomes. An official would be warranted in stronger measures of opposition against decisions to bomb civilian targets in a guerilla war than against decisions to lower trade barriers and import duties.⁹ In case of political disagreement of the latter sort, straightforward resignation seems the most appropriate action (once the decision is final). Dissenters must also consider whether the policy they oppose is a one-time incident or part of a continuing pattern and whether the wrongness of the policy is outweighed by the value of the other policies the organization is pursuing. Furthermore, dissenters must examine the extent of their own involvement and own role: how (formally and informally) responsible are they for the policy? What difference would their opposition make to the policy and to the other policies of the organization? To what extent does the policy violate the ethics of groups to which they are obligated (such as the canons of the legal or medical professions)?

These considerations not only determine whether an official is justified in opposing the organization's policy, but they also help to indicate what methods of dissent the official may be justified in using to express opposition. The more justified an official's opposition, the more justified the official is in using more extreme methods. The methods of dissent may be arrayed on a continuum from the most extreme to the most moderate. Four types of dissent will illustrate the range of this continuum and raise some further issues they any would-be dissenter must consider.

First, there are those forms of dissent in which an official protests within the organization but still helps implement the policy, or (a slightly stronger measure) asks for a different assignment in the organization. In its weakest form, this kind of dissent does not go much beyond the ethic of neutrality. But unlike the ethic, it would permit officials to abstain from active participation in a policy they oppose and to continue their protest as long as they do so in accordance with the accepted procedures of the organization.¹⁰

One danger of this form of protest is what has been called the "domestication of dissenters".¹¹ A case in point is George Ball, who as undersecretary of state in the Johnson administration persistently argued against the government's Vietnam policy in private meetings:

Contd/..

Once Mr. Ball began to express doubts, he was warmly institutionalized: he was encouraged to become the in-house devil's advocate on Vietnam... The process of escalation allowed for periodic requests to Mr. Ball to speak his piece; Ball felt good... (he had fought for righteousness), the others felt good (they had given a full hearing to the dovish option); and there was minimal unpleasantness.¹²

In this way dissenters can be "effectively neutralized", and contrary to their intentions, their dissent can even help support the policy they oppose. It is important therefore to consider whether this effect is inevitable, and, if not, to discover the conditions under which it can be avoided.

In a second form of dissent, officials, with the knowledge of, but against the wishes of their superiors, carry their protest outside the organization while otherwise performing their jobs satisfactorily. This is the course of action taken by most of the 65 Justice Department attorneys who protested the decision to permit delays in implementing desegregation decrees in Mississippi in August of 1969.¹³ The attorneys signed and publicized a petition denouncing the attorney-general and the president for adopting a policy the attorneys believed violated the law and would require them to act contrary to the ethical canons of the legal profession. They also believed that resignation would not fulfill their obligation to act affirmatively

to oppose illegality. Several of the dissenters argued for stronger actions that would directly block the policy and some gave information to the NAACP Legal Defense Fund, which was opposing the Justice Department in court. Most of the attorneys declined to engage in these stronger actions, however, on the grounds that obstruction would weaken public support for their dissent.

This kind of dissent usually depends for its efficacy as well as its legitimacy, on the existence of some widely accepted standards to which the dissenters can appeal outside the organization. Professional ethics or even the law may not be sufficient, since people disagree on how to interpret both, but appealing to such standards may at least reassure the public that the dissenters are not using their office to impose the dictates of their private consciences on public policy. When dissenters oppose democratically elected officials, they must find ways to show that they are defending principles that all citizens would endorse.

The third form of dissent is the open obstruction of policy. Officials may, for example, withhold knowledge or expertise that the organization needs to pursue the policy, refuse to step aside so that others can pursue it, or give information and other kinds of assistance to

Contd/....

outsiders who are trying to overturn the policy.

A few officials may adopt this strategy for a short time, but organisations can usually isolate the dissenters, find other officials to do the job, and mobilize its own external support to counter any opposition that arises outside the organisation. In any such event, the dissenters are not likely to retain much influence within the organisation. Effective and sustained opposition has to be more circumspect.

We are therefore led to a fourth kind of dissent: covert obstruction. Unauthorized disclosure - the leak - is the most prominent example. Leaks vary greatly in purpose and effect. Some simply provide information to other agencies that are entitled to receive it; others release information to the press or public ultimately reversing a major government policy; and at the extreme, still others give secrets to enemy agents and count as treason. Short of that extreme, we still may want to say that unauthorized disclosure is sometimes justified even when it breaches government procedures or violates the law, as in the release of classified documents.

An analogy is sometimes drawn between official dis-obedience and civil disobedience. Many democratic theorists hold that citizens in a democracy are justified in breaking the law with the aim of changing a law or policy, but only in certain ways and under certain conditions. Citizens must (1) act publicly; (2) commit no violence; (3) appeal to principles shared by other citizens; (4) direct their challenge against a substantial injustice; (5) exhaust all normal channels of protest before breaking a law; and (6) plan their disobedience so that it does not, in conjunction with that of other citizens, disrupt the stability of the democratic process.¹⁴

Even if one thinks that civil disobedience is justifiable, one may not agree that official disobedience is warranted. Officials cannot claim the same rights as citizens can, and, it may be said, the analogy does not in general hold. But the analogy may not hold for the opposite reason. In extreme cases of governmental wrong doing, so much is at stake that we should give officials greater scope for disobedience than we allow citizens. In these cases we might be prepared to argue that the standard conditions, for civil disobedience are too restrictive for officials. If we insist for example that disobedience always

be carried out in public, we may in effect suppress much valuable criticism of government. Fearful of the consequences of public action, dissenting officials may decide against providing information that their superiors have declared secret but that citizens ought to know. The point of relaxing the requirement of publicity would be not to protect the rights of dissenters for their own sake but to promote public discussion of questionable actions of government. We may wish to retain some form of the requirement of publicity, perhaps by establishing an authority to whom a dissenter must make his or her identity known. But this requirement, as well as the others, should be formulated with the goal of maximizing the responsibility of governmental officials, not with the aim of matching exactly the traditional criteria of civil disobedience.

The important task, with respect to disobedience as well as the other forms of dissent, is to develop the criteria that could help determine when each is justifiable in various circumstances. The ethic of neutrality makes that task unnecessary by denying that ethics is possible in administration. But, as we have seen, that administrative neutrality itself is neither possible nor desirable.

II. The Ethic of Structure

The second major obstacle to administrative ethics is the view that the object of moral judgment must be the organization or the government as a whole. This ethic of structure asserts that, even if administrators may have some scope for independent moral judgment, they cannot be held morally responsible for most of the decisions and policies of government. Their personal moral responsibility extends only to the specific duties of their own office for which they are legally liable.

More judgment presupposes moral agency. To praise or blame someone for an outcome, we must assume that the person is morally responsible for the action. We must assume (1) that the person's actions or omissions were a cause of the outcome; and (2) that the person did not act in excusable ignorance or under compulsion. In everyday life, we sometimes withhold moral criticism because we think a person does not satisfy one or both of these criteria. But since usually so few agents are involved and because the parts they play are obvious enough, we are not normally perplexed about whether anyone can be said to have brought about a particular outcome. The main moral problem is what was the right thing to do, not so much who did it. In public life,

especially organizations, the problem of identifying the moral agents, of finding the persons who are morally responsible for a decision or policy, becomes at least as difficult as the problem of assessing the morality of the decision or policy. Even if we have perfect information about all the agents in the organizational process that produced an outcome, we may still be puzzled about how to ascribe responsibility for it. Because many people contribute in many different ways to the decisions and policies of an organisation, we may not be able to determine, even in principle, who is morally responsible for those decisions and policies. This has been called "the problem of many hands,"¹⁵ and the assumption that it is not soluable underlies the ethic of structure.

Proponents of the ethic of structure put forward three arguments to deny the possibility of ascribing individual responsibility in organisations and thereby to undermine the possibility of administrative ethics. First, it is argued that no individual is a necessary or sufficient cause of any organizational outcome.¹⁶ The contributions of each official are like the strands in a rope. Together they pull the load: no single strand could do the job alone, but the job could be done without any single strand. Suppose that for many

decades the CIA has had a policy of trying to over throw third-world governments that refuse to cooperate with their operatives, and suppose further that many of these attempts are morally wrong. No one presently in the agency initiated the practice, let us assume, and no one individual plays a very important role in any of the attempts. If any one agent did not do his or her part, the practice would continue, and even particular attempts would still often succeed. How could we say that any individual is the cause of this practice?

A second argument points to the gap between individual intention and collective outcomes. The motives of individual officials are inevitably diverse (to serve the nation, to help citizens, to acquire power, to wing a promotion, to ruin a rival). Many praiseworthy policies are promoted for morally dubious reasons, and many pernicious policies are furthered with the best of intentions. In many organisations today, for example, we may well be able to say that no official intends to discriminate against minorities in the hiring and promoting of employees; yet the pattern of appointments and advancements still disadvantages certain minorities. Here we should want to condemn the pattern or policy (so the argument goes), but we could not morally blame any individual official for it.

A third argument stresses the requirements of role. The duties of office and the routines of large organisations require individual actions which in themselves harmless or even in some sense obligatory combine to produce harmful decisions and policies by the organization. Although the policy of the organization is morally wrong each individual has done his or her moral duty according to the requirements of office. The collective sum is worse than its parts. In a review of the policies that led to financial collapse of New York City in the mid-1970s and endangered the welfare and livelihoods of millions of citizens one writer concludes that no individuals can be blamed for the misleading budgetary practices that helped bring about the collapse: "The delicately balanced financial superstructure was a kind of evolutionary extrusion that had emerged from hundreds of piecemeal decisions."¹⁷

If we were to accept these arguments, we would let many guilty officials off the moral hook. Without some sense of personal responsibility officials may act with less moral care and citizens may challenge officials with less moral effect. Democratic accountability is likely to erode. How can these arguments be answered so that individual responsibility can be maintained in organisations?

First, we should not assess an official's moral responsibility solely according to the proportionate share he or she contributes to the outcome. "Responsibility is not a bucket in which less remains when some is apportioned out."¹⁸ If a gang of 10 thugs beats an old man to death, we do not punish each thug for only one-tenth of the murder (even if no single thug hit him hard enough to cause his death). Further in imputing responsibility we should consider not only the acts that individuals committed but also the acts they omitted. Even though in the CIA example no one initiated the wrongful policy many officials could be blamed for failing to try to halt the practice. Admittedly there are dangers in adopting a notion of "negative responsibility."¹⁹ One is that such a notion can make individuals culpable for almost anything (since there seems to be no limit to the acts that an individual did not do). But in the context of organisations we can more often point to specific omissions that made a significant difference in the outcome and that are ascribable to specific persons. Patterns of omissions can be predicted and specified in advance.

The force of the second argument which points to the gap between individual intention and collective outcome can be blunted if we simply give less weight to intentions than to consequences in assessing moral

culpability of officials at least in two of the senses that "intention" is commonly understood - as motive and as direct goal. It is often hard enough in private life to interpret the motives of persons one knows well; in public life it may be impossible to discover the intentions of officials especially when the motives of so many of those questioning the motives of officials are themselves questionable. Insofar as we can discover motives, they are relevant in assessing character and may sometimes help in predicting future behavior, but administrative ethics does better to concentrate on actions and results in public life.²⁰

What about officials who directly intend only good results but because of other people's mistakes or other factors they do not foresee contribute to an unjust or harmful policy? Here the key question is not whether the officials actually foresaw this result, but whether they should have foreseen it.²¹ We can legitimately hold public officials to a higher standard than that to which we hold ordinary citizens. We can expect officials to foresee and take into account a wider range of consequences partly because of the general obligations of public office. Where the welfare of so many are at stake, officials must make exceptional efforts to anticipate consequences of their actions.

Moreover the nature of organisation itself often forestalls officials from plausibly pleading that they did not foresee what their actions would cause. Organizations tend to produce patterned outcomes; they regularly make the same mistakes in the same ways. While officials may once or twice reasonably claim they should not have been expected to foresee a harmful outcome to which their well-intentioned actions contributed, there must be some (low) limit to the number of times they may use this excuse to escape responsibility. In the example of discrimination in employment, we would say that officials should recognize that their organizational procedures (combined with social forces) are still producing unjust results in personnel decisions; They become partly responsible for the injustice if they do not take steps to overcome it as far as they can.

The requirements of a role insulate an official from blame much less than the earlier argument implied.²² The example of the New York City fiscal crisis actually tells against that argument as much as for it. Mayor Beame was one of the officials who disclaimed responsibility for the allegedly deceptive accounting practices on the grounds that they were part of organizational routines established many years earlier and could not be changed in the midst of a crisis.

But Beame had also served as comptroller and in the budget office during the years when those accounting practices were initiated.²³ In ascribing responsibility to public officials, we should keep in mind that it attaches to persons not offices. It cannot be entirely determined by and one role a person holds and it follows a person through time. These features of personal responsibility are sometimes ignored. Public officials are blamed for an immoral (or incompetent) performance in one role but then appear to start with a clean state once they leave the old job and take up a new one. This recycling of discredited public figures is reinforced by the habit of collapsing personal responsibility into role responsibility. Another way that officials may transcend their roles should also be emphasized. Even when a role fully and legitimately constrains what an official may do, personal responsibility need not be completely extinguished. Officials may escape blame for a particular decision, but they do not thereby escape blame for a particular decision, but they do not thereby escape responsibility for seeking to change the constraints of role and structure that helped produce that decision, and they do not escape responsibility for criticising those constraints. Criticism of one's own past and current performance and the structures in which that performance takes place may be the last refuge of moral responsibility in public life.

Administrative ethics is possible - at least the two major theoretical views that oppose its possibility are not compelling. We are forced to accept neither an ethic of neutrality that would suppress independent moral judgement nor an ethic of structure that would ignore individual moral agency in organizations. To show that administrative ethics is possible is not of course to show how to make it actual. But understanding why administrative ethics is possible is a necessary step not only toward putting it into practice but also toward giving it meaningful content in practice.

NOTES

1. It may be assumed that there is no important philosophical distinction between "ethics" and "morality". Both terms denote the principles of right and wrong in conduct (or the study of such principles). When we refer to the principles of particular professions (e.g., legal ethics or political ethics), "ethics" is the more natural term; and when we refer to personal conduct (e.g., sexual morality), "morality" seems more appropriate. But in their general senses, the terms are fundamentally equivalent. For various definitions of the nature of morality or ethics, see William Frankena, *ethics*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1973), pp 1-11; Alan Dongan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp, 1-31; G.J. Warnock. *The Object of Morality* (London: Methuen & Co., 1971), pp.1-26.
2. Cf. the method of "reflective Equilibrium" presented by John Rawls, *Theory of Justice* (Cambridge: Harvard University Press, 1971), pp.48-51.

3. For citations and analysis of some writers who adopt part or all of the ethic of neutrality, see Joel L. Fleishman and Bruce L. Payne (eds.) *Ethical Dilemmas and the Education of Policy-makers* (Hastings-on-Hudson, N.Y.: The Hastings Center 1980), pp.36-38. Of John A. Rohr, *Ethics for Bureaucrats* (New York: Dekkar, 1978).
4. Cf George Graham "Ethical Guidelines for Public Administrators", *Public Administration Review* vol. 34 (January/February, 1974), pp 90-92.
5. Donald Warwick, "The Ethics of Administrative Discretion", in Joel Fleishman et al. (eds) *Public Duties* (Cambridge: Harvard University Press, 1981), pp 93-127.
6. Edward Weisband and Thomas M. Franck *Resignation in Protest* (New York: Penguin, 1976), p. 588.
7. J. Anthony Lukas, *Nightmare: The Underside of the Nixon Years* (New York: Penguin, 1976), p.588.
8. On "complicity", see Thomas E. Hill, "Symbolic Protest and Calculated Silence," *Philosophy & Public Affairs* (Fall 1979), pp. 83-102. For a defense against the charge of moral self-indulgence, see Bernard Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981), pp 40-53.
9. For an example of the latter, see Weisband and Franck, p. 46.
10. Cf. Graham, p. 92
11. James C. Thomson, "How could Vietnam Happen?" *Allantic* (April 1968), p.49. Also see Albert Hirschman *Exit, Voice and Loyalty* (Cambridge: Harvard University Press, 1970), pp. 115-119.
12. Thomson, p.49.
13. Gary J. Greenberg, "Revolt at Justice", in Charles Peters and T. J. Adams (eds.) *Inside the System* (New York: Praeger, 1970), pp 195-209.
14. See Rawls, pp.363-391.
15. Dennis F. Thompson, "Moral Responsibility of Public Officials: The Problem of Many Hands" *American Political Science Review*, vol. 74 (December 1980), pp.905-916.

16. John Ladd "Morality and the Ideal of Rationality in Formal Organizations," *Monist* vol 54, (October 1970) pp 488-516.
17. Charles R Morris *The Cost of Good Intentions* (New York: W.W. Norton 1980), pp 239-240. For some other examples of structuralist analyses, see Herbert Kaufman, *Red Tape* (Washington, D.C.: Brookings, 1977), pp 27-28; and Richard J. Stillman *Public Administration: Concepts and Cases* 2nd ed. (Boston: Houghton-Mifflin, 1980), p.34.
18. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books 1974), p 130.
19. Cf. Bernard Williams "A Critique of Utilitarianism", in J.J.C. Smart and Williams *Utilitarianism* (Cambridge: Cambridge University Press, 1973), pp 93-118.
20. But of Jel L Fleishman, "Self-Interest and Political Integrity," in Fleishman et. al.(eds.) pp. 52-92.
21. But cf. Charles Feied, *Right and Wrong* (Cambridge: Harvard University Press 1978), esp. pp 21-22, 26, 28, 202-205. More generally on "intention", see Donagan, *Theory of Morality* pp 112-142; and J.L. Mackie, *Ethics* (New York: Penguin 1977), p.203-226.
22. On role responsibility see H.L.A. Hart *Punishment and Responsibility* (New York: Oxford University Press 1968), pp 212-214; and R.S. Downie, *Roles and Values* (London: Methuen, 1971), pp. 121-145.
23. Dennis F Thompson "Moral Responsibility and the New York City Fiscal Crisis", in J Fileishman et al; pp. 266-285.

THE G.L. MEHTA MEMORIAL. LECTURE 1981,
"THE ROOTS OF CORRUPTION" BY B.K. NEHRU,
GOVERNOR OF JAMMU & KASHMIR

.....

I am honoured that I should have been given this opportunity to pay a tribute to the memory of an illustrious son of India whom I had the privilege of knowing and working with for many years. He was one of those dedicated workers who work in silence for the benefit of their country, and he worked for it in many fields. I came to know and to admire the sterling qualities of Gaganbhai Mehta when I was Economic Minister in Washington thirty years ago and he was my Ambassador. Since then his death, we kept in close contact with each other and my admiration for him never ceased.

2. The subject on which I speak today would have been of great concern to him for he belonged, like myself, to the age when India was honest; he would, like me, have been quite unable to accept the canker of corruption, which is today eating into the vitals of our country. So insured have we become to it that instead of reacting to it as destructive of all morality and decency we accept it as a recognised way of life. Corruption is rampant in every sector of our society, private as much as public, but I speak today only of corruption within the governmental process for, given the dominant role that governments play in any country, it is the values practised (rather than preached) by our masters, the elected representatives of the people, that set the tone for society as a whole.

3. It is unfortunately undeniable that corruption has spread to every part of the governmental apparatus; the record in office of no political party is better than of any other. We are powerless prisoners of the system within which we must operate. An uncomfortably large number of politicians and Ministers are corrupt,

corruption is universal in the lower ranks of the public services, it has affected the middle ranks as well and is now infecting the apex of our administrative structure- the All- India services- who used at one time to be, like Gessler's wife, wholly above suspicion. The consequence is the abnegation of the Rule of Law. The honest man can not enjoy the rights the law gives him; the dishonest cannot be punished for any transgression of it. Our admirable post-independence record of legislation for the benefit of the common man has benefited him only peripherally for it has not been fully implemented. There are no laws, civil or criminal, through which a coach and four cannot be driven, and is not driven, by those who have either money or political influence. The laws which affect the vested interests remain a dead letter.

4. Why have we degenerated, in one single generation, from being an honest society into a dishonest one? Part of the cause is, of course, the process of the conversion of a static into a comparatively dynamic society; the change has upset the old values but our exposure to wealth is so new that no new values have yet been developed to take their place. Status and function in India were dependent on birth and were unalterable. Status and function today increasingly depend on the possession of wealth; when the mad race for money. The process of economic development, which requires the ideological pursuit of material prosperity, must necessarily, to a certain extent, lead to an exaggeration in the importance attached to money, which alone can buy material well being.

5. But the principal reason why we are corrupt is the political system we have adopted which cannot exist without large scale expenditure of money. The average size of a parliamentary constituency is over 6000 sq. kms. the average population is 1.25 million. The average constituency in the States has an area of almost 1000 sq. kms.

and the average population is almost 200,000. The cost of fighting an election in constituencies of this size, even without any illegitimate expenditure, is bound to be stupendous. The mere process of making known to the electorate, the name of the party and the symbol of the candidate, let alone the policies the candidate stands for, and what he intends to do if elected, requires a huge amount of money on travel, posters, handbills, scooters, jeeps, loudspeakers, flag-bearers and the like. On election day itself, there is a substantial expenditure on election agents at each polling booth and their subsistence and accommodation. In addition, there is the illegitimate expenditure on the private armies that many candidates employ to terrorise opponents from voting against them and to overwhelm and "capture" polling booths, a practice that is not uncommon. It is estimated that the costs of an election to a parliamentary constituency are of the order of Rs. 5 to 20 lakhs and to a state Assembly between Rs. 1 to Rs. 5 lakhs. There are 542 elected members of the Lok Sabha and 3553 members of the State Assemblies. The total costs to the parties and to the candidates are colossal.

6. This money has to be raised partly by the political party of the candidate and partly by the candidate himself for no political party can afford to finance the entire expenditure on his election, it is essential for a prospective candidate to have some considerable funds of his own. In the well-run democracies, political contributions are made to those parties and candidates who favour the policies the contributor supports in the hope that if the party wins these policies will be put into effect. These contributions come from individuals and interest groups - corporations, trades' unions and the like. They are made openly; there is nothing clandestine about them. There are, in certain countries, upper limits on the amount of each contribution and in public audit.

7. Post -Independence India started the same way through the larger political contributors perhaps always hoped for something more than the mere formulation of governmental policies. They were sometimes shown consideration; sometimes they were not. There system has tended to degenerate into a more direct relationship between the money contributed and the favour granted. Once this nexus is accepted as a valid concomitant of the democratic culture- as it seems to have happned in India- not even the most powerful leader can stop the advance of corruption. Contrubutions to parties are transferred fairly rapidly through a variety of mechanisms into contributions to ones own welfare. The process is, of course, helped in our country by the vast discretionary powers vested in the Executive at all levels.

8. The possibility of the misuse of these discretionary powers has changed the character of those who now enter politics. The theory of democracy is that elections are fought on issues which are embodied in the party manifesto, that the voters votes for the candidate because he is in favour of the policies of the candidate's party and that when he gets elected those policies will be followed for the benefit of the country. Today, however, there is only small minority of politician which is interested in issues of policy or the enactment of laws. There is no other explanation for the meagre attendance at sessions of Legislatures when legislation is under discussion. The kind of candidate who would be interested, by educational and outlural background, in issues of policy and in the contents of legislation no longer enters into politics for, under our present electoral system, he has no chance of getting elected. A cursory analysis of the composition of our Legislatures would show that those legislators who are

so interested are, with minor exceptions, holdovers from the politics of an earlier era or come from a background of public service whether political, social or administration. The new entrants into political life are, by and large, not men who are interested in policy a large number of them would be hardput to it to enunciate what the election manifestos of their respective parties contain. They are in the legislatures in the pursuit of power and they pursue power not only for its intoxication but for the self that is the accompaniment of power. It is interesting, as an index to the kind of person who now wields power, that in one particular state no less than 30% of the legislators are involved in criminal cases of one type or the other.

9. The aim is to become a Minister, but opportunities for private gain are not limited to Ministers alone; these are available in plenty to all members of the legislatures. This is because, under our system, the executive government is continuously at risk; if MLAs withdraw their support the Ministry falls; the chief Minister must, therefore, constantly keep the members of his legislature happy. The best way to do this is, of course, to make as many of them as he decently can Ministers; every state in India now has more Ministers than Deputy Commissioners or Collectors. That there is no work for all of them and that indeed a plethora of Ministers comes in each other's way is irrelevant. What is relevant is that by this device not only do the MLAs who are made Ministers enjoy the salaries and perquisites of office but are free to indulge in less palatable activities. Those, who cannot thus be accommodated, are made Chairmen or Directors of Public sector corporations whose number goes on increasing, not because of our commitment to socialism but to the necessity of buying political support, and whose mounting losses are

an ever-increasing burden on the tax-payer. This is contrary to one of the fundamentals of the parliamentary system but has for long been accepted by all political parties in our country.

10. Where MLAs cannot be made Ministers or cannot be absorbed in public sector corporations, they are made virtual rulers of their constituencies; they get done there whatever they wish. If duly constituted authority has the temerity to object to what is being done on the ground that it is illegal, unfair or improper, that duly constituted authority is forthwith transferred or suspended. Nor are these favours, it can safely be assumed, done free of charge. If and when a state gets a chief Minister who wishes to administer in accordance with laws and through the duly constituted administrative apparatus, there is an immediate outcry against him as being a tool of the bureaucracy.

11. The corruption at the political level which leads to a disregard of the Rule of Law, naturally, completely demoralises the administration. Why should the civil servant bother about rules and regulations if a simple telephone call to the Minister can upset his decision? Why should he stand up against the local politician if all that it earns him is the disruption caused by a transfer and why, if his superiors are taking money, should he also not share in the loot? The temptation to corruption is, of course, enormous, for the salaries of public servants, particularly in the higher grades, have now become ludicrous through the combined effects of inflation and taxation, with the consequences that these who, by virtue of the power placed in their hands, should never be in economic difficulty, are always in acute physical want.

12. How then is one to break this vicious circle and lift the country out of the morass into which it has fallen? It is sometimes suggested that what is required is a moral revolution. I am afraid that this is begging the question. Human nature is not that easily changed; where Gautama the Budha, Jesus Christ and Mahatma Gandhi have all failed lesser mortals are not likely to succeed. What is required is that the political system through which those who exercise executive, legislative, administrative and judicial power are chosen should be such as to discourage rather than encourage the dishonest to occupy these positions and that the operation of the system should be such as to leave as little opportunity for the exercise of dishonesty as possible. No tinkering with our present Constitution is going to achieve any of these results; what is wanted is a root and branch reform.

13. The system to replace the present one should, not only for ideological reasons but for practical ones, be found within the framework of democracy. It must ensure that the Executive can be changed by the periodic exercise of the popular will, that legislation should be in general accord with the wishes of the people, that above all, the laws would be applied equally to all, irrespective of their wealth or poverty, their political views and connections or their relationships with those occupying the seats of power. I propose to suggest now, in very broad outline indeed, the essentials of an alternative system.

14. The first reform necessary is in our system of elections to the state and central Legislatures. Instead of being direct, they should be indirect through a series of electoral colleges and instead of the first-past-the-post rule which we have today, there should be proportional

representation. The base of the system should be the panchayat in the villages or the local body (by whatever name called) in the towns. There will, of course, have to be many local variations in choosing the base; in large cities, for example, the first election might be for the ward and then for the corporation as a whole. Those thus elected should then elect, again through proportional representation, the next tier which can be the zila Parishads or the District Boards. The third tier should be the State legislature and the fourth parliament. The advantage of this would be that, first, the electorate at each stage being exceedingly small no money will be required for the electoral process. Secondly, as the candidates will be personally known to the electors the likelihood is that they will vote for honest and capable rather than for persons totally unknown. Thirdly, at every stage of the process, the electorate will have some concept of the issues on which it is voting which it does not have at the present moment. Today, a villager in remote corners of India is actually expected to express an opinion on complicated questions of foreign, defence and financial policy on which he cannot possibly have any knowledge. What he votes for is not the candidate of an issue but a symbol usually embodying the personality of a charismatic leader in whom he has faith. Fourthly, the advantage of a system of proportional representation will be that elected bodies will reflect much more closely than they do at present- when majorities are obtained on a minority vote- the various shades of opinions in the country. Nor will it then be necessary to take into account, in choosing candidates, their caste or communal character; this will automatically be taken care of by proportional representation without exacerbating, as at present happens, the differences and enmities between various sections of the population and creating divisions where none existed. Fifthly, there being no territorial constituencies there will be no pulls and pressures to

favour this or that geographical area which today so distort our economic decisions.

15. The objections against the system of indirect election and proportional representation come largely from those- and they are the majority- whose acquaintance with constitutional theory is principally through the British constitution which is the model for ours. British political scientists have held that proportional representation must necessarily lead to coalitions and, therefore, to weak governments. The major British political parties have supported this view because it has so far suited their interests. But in fact remains that every other democratic parliament on the European continent is elected through proportional representation; if results are any guide they seem to function pretty well on the basis of a national consensus: they certainly avoid the violent and harmful swings of policy that have characterised Britain the recent times. Perhaps, the objectors will change their minds when, as is very likely, Britain too goes over to proportional representation. Moreover, if we adopt, as I later recommend, a total separation between the executive and the legislature powers this objection loses its validity.

16. The objection to indirect elections if based on the assumption that, as under this system the electors are few in number, it is easier to bribe them than it is to corrupt a large electorate. This objection which again draws its sustenance from the British Practice, is undoubtedly theoretically correct but our own experience during the last thirty years should be far us a better guide. Our direct elections require, as I have shown, enormous amounts of money. In Britain where constituencies are small and the constituents can be approached individually virtually no money is needed. Indian experience in indirect elections is limited

to the elections of various Upper Houses in the States and to the Rajya Sabha in the Central Legislature. In neither set of elections is much money spent and they have, in fact, been much less corrupt than direct elections. Attempts have, of course, been made to bribe the electors, but what has happened more often than not is that people have swallowed the money and have voted as they would otherwise have done. It is of great significance that no less a person than Jawaharlal Nehru should be on record as having, as early as our first general election in 1952, expressed serious misgivings about our electoral process and wondered aloud whether indirect elections would not suit us better.

17. The second reform is to ensure a real separation of powers between the Executive and the Legislature which are, at present, totally confused. The Legislature must confine itself to legislating and should have no say either in electing or keeping in power the chief Executive. The power of the legislators to blackmail the Chief Executive will come to an end; he will be able to govern without corruption in accordance with the laws and through the duly constituted administrative apparatus, much to the relief of the common man. Moreover, the moment this power is denied to the legislator only those who are interested in good legislation, and not in exercising power or making money, will be candidates for election to legislative office. It follows, if legislative and executive powers are to be separated, that membership of the Legislature must exclude all those who held offices of profit under the Government, including ministerial office. There will be two advantages; the competence of ministers will immeasurably improve; so will the performance of the public sector.

18. The third reform would be to give the chief Executive a fixed tenure of office which should be limited

to one term during which he should be irremovable except by a process of rigidly controlled impeachment. The term should be fairly long, say seven years at the Centre and five in the States. The advantages would be, first, that the Chief Executive not having to keep satisfied several hundreds of people will be free to administer the country in conformity with the laws without distorting the administration through extraneous pressures. Secondly, by limiting his period of office to one term, he will have no incentive not to take the very unpopular measures that, everybody is agreed, are necessary if our country is to progress, for any unpopularity he may incur will to him be irrelevant.

19. It would be desirable, if possible, for the Chief Executive, in order to give him the maximum moral authority, to be elected by direct universal suffrage. But the practical difficulties are too great; the electorate, even in the States, will be far too big; large amounts of money will be needed for the purpose and corruption will again raise its ugly head. The funding of this Election (or the ones to the legislatures) by the States is no answer; additional money will always be spent and raised. The best alternative is for all the legislatures and local bodies to form an electoral college for this purpose. The number of voters will still be large but will be manageable.

20. It is also necessary, in a country as diverse of ours, that the national executive is not put into office simply because he was the confidence of a region which overwhelms by its numbers the less populous parts of the country; this can be safeguarded by ensuring that the successful candidate must secure a certain proportion

of the votes in the various regions of the country. The same qualification will be necessary in those States which have clearly marked regional diversities so as to prevent a similar tyranny of numbers.

21. The fourth reform is to ensure that the administrative apparatus does not become a slave of the will of the Chief Executive and, unlike as at present, administers the laws instead of carrying out his arbitrary orders. This requires that the civil services be granted the kind of autonomy which they possess, by convention, in all Western Parliamentary democracies. The powers of promotion, suspension and transfer which are the powers now used to bend the civil servant to the Minister's will, must be exercised, not by the political executive, but by a group of senior civil servants themselves. As we are no respecters of any convention, this result will have to be achieved by law. There is nothing revolutionary, extra-ordinary or undemocratic about this even in the Indian context. This is the system that today prevails in the Indian Defence, Services and is the main reason why they have still, unlike the other public services, retained their discipline and their efficiency. It goes without saying, of course, that the salaries of all public servants, including the Ministers and Judges, must be increased several-fold. They are today totally unrealistic and a virtual compulsion to corruption.

22. The fifth reform required is that of the judicial system. The independence of the judiciary is an inestimable safeguard against the tyranny of the Executive. In order to strengthen it the pensions of the Judges should equal their salaries. This will remove the temptation, which exists now, to curry favour with the Executive for jobs after retirement. But if the legal

machinery is to be freed from corruption, not only must it be free from political interference but must also be capable of rendering prompt and inexpensive justice which unfortunately it is not today. For this purpose, major reforms as fundamental as those I have indicated for the changes in the constitution are necessary. Our judicial system too suffers from an excessive approximation to the British model. It is far too slow, too centralised, too lawyer-oriented, too bound by technicalities to respond to the needs of our country. The result is despair among the honest who can not enforce their rights through legal means and are compelled to resort to physical force or money power.

23. The final reform is to ensure that the regulatory activities of Government are implemented according to settled norms and not arbitrarily. Even if unnecessary controls and regulations are eliminated a great deal of regulatory activity will perforce continue. Today the controls are made and administered by agencies who are directly subordinate to the political government. This is wrong in principle. Policies, and the laws and regulations designed to implement them, must necessarily be made by the political government, their actual implementation must be in the hands of a separate and quasi-autonomous authorities whose procedures must be open enough to inspire confidence in the general public.

24. The kind of constitutional and administrative reforms I have suggested have not been drawn out of thin air; they are prevalent in various parts of the world of today. They are likely to be opposed vigorously not only by politicians of all parties but by the possessors of money, for the present system is ideal to satisfy their respective needs. As changes of this kind can only be

Brought about by the elected representatives of the people, there is no hope of their adoption in normal times. But situations arise where the national discontents reach such high proportions that a crisis develops. It is desirable that there should be, through discussion, a national consensus among those who have the knowledge and the intellect, even though they may not have the power, to determine what changes should be made when an opportunity may arise for making them. And it is in this hope that I have put forward my ideas.

.....

CORRUPTION-

ITS CAUSES AND EFFECTS

Gunnar Myrdal*

The term "corruption" will be used in this chapter in its widest sense, to include not only all forms of "improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life" but also the activity of the bribers.¹

The significance of corruption in Asia is highlighted by the fact that wherever a political regime has crumbled in Pakistan and Burma, for instance, and, outside South Asia, in China- a major and often decisive cause has been the prevalence of official misconduct among politicians among businessmen and the general public.² The problem is therefore of vital concern to the governments in the

1. See India, Government of, Ministry of Home Affairs, Report of the Committee on Prevention of Corruption, New Delhi, 1964, p. 5; of pp. 11 ff. This committee is usually referred to as the Santhanam Committee, after its chairman; we shall cite its report as the Santhanam Committee report hereafter.

2. A few years before the military putsch of 1958 in Pakistan, Tibor Mende reported that: "Probably no other symptom of Pakistani Public life has contributed more to the demoralization of the 'common man' than corruption." Illicit practices had reached such proportions that their effect is likely to wipe out whatever benefits new economic projects might have secured for him. Some measures were taken by the government in response to "widespread demand for action" and "a few minor officials" were dismissed, but "they were the small culprits". (Tibor Mende, South-East Asia Between Two Worlds, Turnstile Press, London, 1955)

SOURCE: ASIAN DRAMA: An Inquiry into the Poverty of Nations by GUNNAR MYRDAL, Volume-II, Published by Allon Lane the Penguin Press, London 1968, page 937 to 957.

region. Generally speaking, the habitual practice of bribery and dishonesty tends to pave the way for an authoritarian regime, whose disclosures of corrupt practices in the preceding government and whose punitive action against offenders provide a basis for its initial acceptance by the articulate strata of the population. The Communists maintain that corruption is bred by capitalism, and with considerable justification they pride themselves on its eradication under a Communist regime.¹ The elimination of corrupt practices has also been advanced as the main justification for military takeovers. Should the new regime be unsuccessful in its attempts to eradicate corruption, its failure will prepare the ground for a new putsch of some sort. Thus, it is obvious that stability of South Asian governments. Its effects will be discussed further in Section 5.

1. "In the disorders in China since 1911 the scale of corruption had increased in a monstrous way, and reform was very much needed. The surprising achievement of the Communists was to be able to induce among their party members, who were after all thoroughly Chinese, a militant and puritanical hatred of the old system. Here was one of the outstanding instances of ideas and institutions being able to change people's character. The Communist party set out to hunt the corrupt; it disciplined its own members savagely if it caught them, it developed a steady pressure against corruption in all the administration - incidentally attaching charges of corruption to all of whom it disapproved upon other grounds". (Guy Wint, Spotlight on Asia, Penguin Books, Middlesex, 1955.)

The present writer's observations confirm the view that what has impressed the South Asian intellectuals most about China's Communist revolution has been the establishment of a strong, disciplined state, one that is scrupulously honest by South Asian standards.

1. A Taboo in Research on South Asia

Although corruption is very much an issue in the public debate in all South Asian countries, as we shall demonstrate in Section 2, it is almost taboo as a research topic and is rarely mentioned in scholarly discussions of the problems of government and planning. With regard to research conducted by Americans, the explanation might seem at first glance, to lie in the fact that public life in the United States, particularly at the state and city levels, is still not as free of corruption as in Great Britain, Holland, or Scandinavia.² But this explanation does not take us far, as social scientists in the United States, particularly in an earlier generation, never shied away from exposing corruption in public administration, politics, and business, nor were their inquiries censored. Moreover, scholars from the Western European countries mentioned have shown no greater interest than Americans in studying corruption in South Asia. Neither does the fact that Western enterprises are in league with corrupt elements in South Asia on a large scale explain the disinterest of Western scholars in the problem of South Asian corruption, for business has not been that influential in guiding research; many studies with conclusions unfavourable to Western business interests have in fact been made. For reasons we shall set forth later² the lack of investigation cannot be attributed, either, to the difficulty of finding an empirical basis for research on corruption.

2. Footnotes 1

1. Section 3 and 6 below

2. Section 2

Instead, the explanation lies in the general bias that we have characterized as diplomacy in research.¹ Embarrassing questions are avoided by ignoring the problems of attitudes and institutions, except for occasional qualifications and reservations - which are not based on even the most rudimentary research and do not, of course, alter the basic approach. South Asian social scientists are particularly inclined to take this easy road, whether they are conservatives or radicals. The taboo on research on corruption is, indeed, one of the most flagrant examples of this general bias. It is rationalized, when challenged, by certain sweeping assertions: that there is corruption in all countries (this notion, eagerly advanced by students indigenous to the region, neglects the relative prevalence of corruption in South Asia and its specific effects in that social setting); that corruption is natural in South Asian countries because of deeply ingrained institutions and attitudes carried over from colonial and pre-colonial times (this primarily Western contention should, of course, provide an approach to research and a set of hypotheses, not an excuse for ignoring the problem); (that corruption is needed to oil the intricate machinery of business and politics in South Asian countries and is, perhaps, not a liability given the condition prevailing there (again, this mainly Western hypothesis about the functioning of the economic and social system should underline rather than obviate the need for research); that there is not as much corruption as is implied by the public outcry in the South Asian countries (this claim needs to be substantiated, and if it is true, the causes and effects of that outcry should be investigated). These excuses, irrelevant and transparently thin as they are, are more often

expressed in conversation than in print. That the taboo on any discussion of corruption in South Asia is basically to be explained in terms of a certain condescension on the part of Westerners was pointed out in the Prologue (Section 5.)

In our study we have not attempted to carry out the necessary research on corruption in South Asia, or even a small part of it; we had neither the time nor the facilities for an empirical investigation on this scale. The main purpose of this chapter is thus to explain why the taboo should be broken. In the course of the discussion we venture to sketch a theory of corruption in South Asia by offering some reasonable, though quite tentative questions to be explored and hypotheses to be tested.

2. The "Folklore" of Corruption and the Anti-Corruption Campaigns

The problem of corruption, though not a subject of research, is, as we have said, very much on the minds of articulate South Asians. The news papers devote much of their space and the political assemblies much of their time to the matter: conversation, when it is free and relaxed, frequently turns to political scandals. Periodically, anti-corruption campaigns are waged: laws are passed; vigilance agencies set up, special police establishments assigned to investigate reports of misconduct, some times officials, mostly in the lower brackets, are prosecuted and punished and occasionally a minister is forced to resign.¹ Occasionally committees are appointed to deal more generally with the problem

1. In India the number of vigilance cases reviewed is steadily increasing. See Santhanam Committee report, Section 3 pp. 14 ff. Although the report places the statistics under the heading extent of corruption, it makes clear (p 14 et passim) that the statistics themselves do not indicate the actual amount of corruption in various branches of administration, or its recent trend.

of counteracting corruption,² following the practice established in colonial times, particularly by the British. In India and Ceylon especially, but also in other South Asian countries, the authorities have, from the start of the independence era, tried to prevent corruption, and these efforts have, on the whole been increasing. Yet the articulate in all these countries believe that corruption is rampant and that it is growing, particularly among higher officials and politicians, including legislators and ministers. The ostentatious efforts to prevent corruption and the assertions that the corrupt are being dealt with as they deserve only seem to spread cynicism, especially as to how far all this touches the "higherups".

Two things, then, are in evidence: (1) what may be called the "folklore of corruption", i.e., people's beliefs about corruption and the emotions attached to these beliefs, as disclosed in the public debate and in gossip; and (2) public policy measures that may be loosely labelled "anti-corruption campaigns", i.e., legislative, administrative, and judicial institutions set up to enforce the integrity of public officials at all levels. Both are reactions to the fact of corruption, and they are related to each other in circular causation. A study of these phenomena cannot of course, provide an exhaustive and entirely accurate picture of the extent of corruption, existing in a country.

2. The Santhanam Committee report is the latest and the most ambitious South Asian Study of corruption. The committee gives certain general judgements about the prevalence of corruption in India to which we shall refer below, but directs its main attention to establishing in considerable detail the various possibilities for corruption afforded by established administrative procedures in India, particularly in the central government, and to working out a system of reforms that would decrease corruption.

the number involved, the positions they hold, and what they are doing. But it is nevertheless true that the folklore of corruption embodies important social facts worth intensive research in their own right.¹ The beliefs about corruption and the related emotions are easily observed and analyzed, and this folklore has a crucial bearing on how people conduct their private lives and how they view their government's efforts to consolidate the nation and to direct and spur development. The anti-corruption campaigns are also important social facts, having their effects, and they are just as easy, or even easier, to record and analyze.

A related question worth study is the extent to which the folklore of corruption reflects, at bottom, a weak sense of loyalty to organized society. Is there, in other words, a general asociality that leads people to think that anybody in a position of power is likely to exploit it in the interest of himself, his family, or other social groups to which he has a feeling of loyalty? If so, people's belief that known offenders can continue their corrupt practices with little risk of punishment, are apt to reinforce the conviction that this type of cynical asocial behavior is widely practiced. The folklore of corruption then becomes in itself damaging, for it can give an exaggerated impression of the prevalence of corruption, especially among officials at high levels. It is certain that fear of belustering that impression influenced Nehru consistently to resist demands for bolder and more

1. In the study of race relations it is the beliefs about race and the institutional and attitudinal systems of segregation and discrimination related to those beliefs that are important, not racial differences as such (see Gunnar Myrdal, *An American Dilemma*, Harper, New York 1944, p. 110 et passim). Something similar is true about corruption, though not to the same extent, as undoubtedly the corrupt practices are important independent of what is believed about them or done to combat them; see Section 5 below.

systematic efforts to cleanse his government and administration of corruption. 'Merely shouting from the house-tops that everybody is corrupt creates an atmosphere of corruption," he said. "People feel they live in a climate of corruption and they get corrupted themselves. The man in the street says to himself: 'well, if everybody seems corrupt, why shouldn't I be corrupt? That is the climate sought to be created which must be discouraged"²

The first task of research on corruption is thus to establish the ingredients of the folklore of corruption and the anti-corruption campaigns. These phenomena are on the surface of social reality in South Asia and therefore lend themselves to systematic observation. The data, and the process of collecting them, should give clues for the further investigation of the facts of actual corruption. Analysis of the interplay of folklore, action and fact and of the relationship of all three to the wider problems of national consolidation, stability of government and effectiveness of development efforts must necessarily take one into murkier depths of social reality.

2. R.K. Karanjia, *The Mind of Mr. Nehru*, Allen & Unwin Ltd., London, 1960 p. 61. The Santhanam Committee report states: 'It was represented to us that corruption has increased to such an extent that people have started losing faith in the integrity of public administration. We heard from all sides that corruption has, in recent years, spread even to those levels of administration from which it was conspicuously absent in the past. We wish, we could confidently and without reservation assert that at the political level, Ministers, Legislators, party officials were free from this malady. The general impressions are unfair and exaggerated. But the very fact that such impressions are there causes damage to the social fabric.'" (pp. 12,13) "The general belief about failure of integrity amongst ministers is as damaging as actual failure".

3. The Facts of Corruption

With public debate quite open and gossip flourishing, the facts in individual cases of wrong doing should not be too difficult to ascertain. The true research task is, however, to establish the general nature and extent of corruption in a country, its incursion upon various levels and branches of political and economic life, and any trends that are discernible. In this section we shall make a start on this task, but our contribution should not be considered as more than a very preliminary sorting out of problems for research. What is said is based on extensive reading of parliamentary records, committee reports, newspapers, and other publications dealing with the subject, and, even more, on conversations with knowledgeable persons in the region, including Western businessmen, as well as on personal observation. The fact that in the United States corruption has for generations been intensively and fruitfully researched should counter the notion that nothing can be learned about this phenomenon.

Concerning first the general level of corruption, it is unquestionably much higher than in the Western developed countries (Even including the United States) or in the Communist countries. It serves no practical purpose, and certainly no scientific interest, to pretend that this is not so. This judgement will gain support when in the next section we turn to the causes of corruption; they are clearly much stronger in South Asia than in the other groups of countries mentioned. The relative extent of corruption in the South Asian countries is difficult to assess. There is more open discussion of corruption in the Philippines, where, in the American tradition,

the press is particularly free and outspoken, then, in, say, Pakistan, Burma and Thailand under their present regimes. In India, where a moralistic attitude is especially apparent greater concern is expressed than in Ceylon, for instance.¹ Whether the amount of public discussion reflects the real prevalence of corruption is doubtful. On the basis of scanty evidence, India, may, on balance, be judged to have somewhat less corruption than any other country in South Asia. Nevertheless, a commonly expressed opinion in India is that "administrative corruption, in its various forms, is all around us all the time and that it rising"² The findings of the Santhanam Committee as to the prevalence of corruption in different branches and levels of responsibility will be reported below, in the text and in footnotes.

If a comparison is made with conditions in the colonial era, the usual view of both South Asian and Western observers is that corruption is more prevalent now than before independence and that, in particular, it has recently gained ground in the higher echelons of officials and politicians. This view, too, will gain support from our subsequent discussion of the causes of corruption. We know on the authority of J.S. Furnivall, moreover that the Netherlands Indies was practically free of corruption in colonial times, unlike Burma where corruption was rampant except at very highest level.³ But in present-day Indonesia

1. Chapter 9 Section 3

2. The Economic Weekly, December 21, 1963, vol. XV, No.51 P. 2061.

3. J.S. Furnivall, Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India, Cambridge University Press, London, 1957.

corruption seems to be at least as much a fact of life as in any other South Asian country.¹ In the Philippines corrupt practices at all levels of business and administration were common in colonial times, but it is generally assumed that they have increased substantially since then.²

There is said to have been much petty corruption in British India on the lower level where indigenous or Anglo-Indian officials were almost exclusively employed, though in most instances Europeans were served promptly and without having to pay a bribe. On the other hand, it is commonly asserted - not only by British observers - that the Indian Civil Service was largely incorrupt. Not all Indian intellectuals agree; some maintain that in later years, and especially during the Second World War,

1. In fact, a decade ago an Indonesian statesman, Mohammad Hatta, wrote: "Corruption runs riot through our society; corruption has also infected a great many of our government departments.... We kore and government employees, whose wages and salaries are no longer adequate for their daily needs, are being exploited by enterprising adventurers who want to get rich quickly... This is why all businessmen who remain faithful to economic morality are constantly being pushed backward. Bribery and graft have become increasingly common, to the detriment of our community and our country. Each year the government loses hundreds of millions of rupiahs in duties and taxes which remain unpaid as a result of fraud and smuggling, both illegal and 'legal'." (Mohammad Hatta, *The Co-operative Movement in Indonesia*, Cornell University Press, Ithaca, 1957.

The situation has certainly not improved since this was written; see Chapter 9, Part-II

An American congressional study group reported: "Those members of the study mission who had visited the Philippines previously on one or more occasions were startled and shocked to find an increase in lawlessness and of Govt. corruption that was more than hinted at." (Report of the Special Study Mission to Asia, Western Pacific, Middle East, Southern Europe and North Africa, Washington, 1960)

corruption tended to spread even to this select group, including British officials.¹ In the princely states corruption was often unchecked and infested the courts of the maharajahs and the higher echelons of administration. What has been said about British India holds broadly true even for Ceylon. The French administration in Indo-China was probably never as clean as its British counterpart in India and Ceylon, but it is generally acknowledged that corruption has increased very rapidly in the successor

1. This view is also expressed, obliquely, by the Santhanam Committee: "Till about the beginning of the Second World War corruption was prevalent in considerable measure amongst revenue, police excise and public Works Department officials particularly of the lower grades and the higher ranks were comparatively free from this evil. The smaller compass of State activities, the 'great depression' and lack of fluid resources set limits to the opportunities and capacity to corrupt or be corrupted. The immense war efforts during 1939 to 1945 which involved an annual expenditure of hundreds of crores of rupees over all kinds of war supplies and contracts created unprecedented opportunities for acquisition of wealth by doubtful means. The war time controls and scarcities provided ample opportunities for bribery, corruption, favouritism etc. The then Government subordinated all other considerations to that of making the war effort a success. Propriety of means was no consideration if it impeded the war effort. It would not be far wrong to say that the high watermark of corruption was reached in India as perhaps in other countries also, during the period of the Second World War. (pp. 6-7)

Any implication that corruption was more widespread among higher officials during the Second World War than now is probably groundless, however, and is gainsaid by the Committee in other passages; see below.

states.² Thailand was always corrupt in its peculiar fashion³ and is thought to have become more so of late.

There seems to be rather general agreement that in recent years corruption in South Asia has been increasing. The Santhanam Committee report speaks of "the growth of corruption" and of the need to arrest "the deterioration in the standards of public life", the assumption that the recent trend of corruption in India is upwards is implicit in the whole report. In Pakistan and Burma the military takeovers in the late 1950's undoubtedly brought major purges in their wake, but many observers--both Westerners and nationals in these countries--are found who believe there has been a resurgence of corruption, particularly in Pakistan, though the bribes have to be bigger because of greater risks.

Statements such as these should be tested by research that could either confirm or refute them; even if broadly confirmed they need to be made much more specific. As for the different branches of administration in the South Asian government, it is generally assumed that the public works departments and government purchasing agencies in all of the countries are particularly corrupt,⁴ as are also the

2. About developments in North Vietnam we have no specific information; that Communist regimes ordinarily stamp out corruption was pointed out in Sector 1.

4. For India the Santhanam Committee report states: "We were told by a large number of witnesses that in all contracts of construction, purchases, sales and other regular business on behalf of the Government, a regular percentage is paid by the parties to the transaction, and this is shared in agreed proportions among the various officials concerned. We were told that in the constructions of the Public Works Department, seven to eleven per cent was usually paid in this manner and this was shared by persons of the rank of Executive Engineer and below down to the Ministry, and occasionally even the Superintending Engineering might have a share."

agencies running the railways, the offices issuing import and other licenses, and those responsible for the assessment and collection of taxes and customs duties.¹ More generally it is asserted that whenever discretionary power is given to officials, there will tend to be corruption². Corruption has spread to the courts of justice, and even to the universities.³

The spread of corruption among minor officials is understood to be consequent on a deterioration of the morals of some of the politicians and higher officials.⁴ Both as cause and effect, corruption has its counterpart in undesirable practices among the general public. The business world has been particularly active in promoting corrupt practices among politicians and administrators, even if it

1. On these the Santhanam Committee report observes: "In the Railways, besides the above (constructions and purchase), similar practice in connection with allotment of wagons and booking of parcels particularly perishables, is said to be in vogue."

"We were told that corruption and lack of integrity are rampant in transactions relating to obtaining of quota certificate essentiality certificates, licenses and their utilisation.

2. Says the Santhanam Committee report: "Where there is power and discretion, there is always the possibility of abuse, more so when the power and discretion have to be exercised in the context of scarcity and controls and press re to spend public money."

3. The same report notes:

Though we did not make any direct inquiries, we were informed by responsible persons including Vigilance and Special Police Establishment Officers that corruption exists in the lower ranks of the judiciary all over India and in some places it has spread to the higher ranks also. We were deeply distressed at this information.

It is a matter of great regret that in some universities, conditions are far from satisfactory for the admission of students, recruitment of lecturers and professors and the general management of university funds."

difficult or impossible to carry on business without resort to such practices, when corruption is widespread. As the Santhanam Committee report points out:

Corruption can exist only if there is some one willing to corrupt and capable of corrupting. We regret to say that both willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes. The ranks of these classes have been swelled by the speculators and adventurers of the war period. To these corruption is not only an easy method to secure large unearned profits but also the necessary means to enable them to be in a position to pursue their vocations or retain their position among their own competitors... possession of large amounts of unaccounted money by various persons including those belonging to the industrial and commercial classes is a major impediment in the purification of public life. If anti-corruption activities are to be successful, it must be recognized that it is as important to fight these unscrupulous agencies of corruption as to eliminate corruption in the public services. In fact they go together.

4. In India, according to the report on which we have been drawing, "There is a widespread impression that failure of integrity is not uncommon among Ministers and that some Ministers who have held office during the last 16 years have enriched themselves illegitimately, obtained good jobs for their sons and relations through nepotism, and have reaped other advantages inconsistent with any notion of purity in public life.... We are convinced that ensuring absolute integrity on the part of Ministers at the Centre and the States is an indispensable condition for the establishment of a tradition of purity in public services".

Our comments concerning the importance of corruption in various branches of the economy are necessarily cast in vague, qualitative terms, as are the judgements expressed in the Santhanam Committee report from which we have quoted so extensively. One important question on which the report of that Indian committee is silent is the role played by Western business interests competing for markets in South Asian countries or embarking on direct investments in industrial enterprises there, either independently or in joint ventures with indigenous firms or with governments.² Western business representatives never touch on this matter publicly, but, as the writer can testify in private conversation they are frank to admit that it is necessary to bribe high officials and politicians in order to get a business deal through and to bribe officials both high and low in order to run their businesses without too many obstacles. They are quite explicit about their own experiences and those of other firms. These bribes, they say, constitute a not inconsiderable part of their total costs of doing business in South Asian countries. Although hardly any foreign company can make it an absolute rule

2. Of a somewhat different character is the corruption connected with grants and aid offered by Western governments. That a considerable amount of the American aid to countries like Laos, South Vietnam, and even the Philippines has been dissipated in large-scale corruption is common knowledge and, in the frank American tradition, has been reported in congressional inquiries and in the press. The writer has not heard similar allegations in relation to foreign aid given India or Pakistan. Apparently the World Bank, the International Monetary Fund, and more generally, the inter-governmental agencies, within the United Nations family have on the whole been able to avoid playing into the hands of the corrupt, except that when aid is rendered in the form of commodities—as, for instance, powdered milk given by UNICEF—part of the deliveries tend to appear on the market instead of reaching their intended destinations. The World Bank, in particular, has increasingly exerted its authority to see that its loans are used to preserve fair competition among suppliers.

to abstain from giving bribes, it is apparent that there is a vast difference in regard to the willingness to bribe, not only between companies but also between nationalities. Among the Western nations, French, American, and, especially, West German companies are usually said to have the least inhibitions about bribing their way through. Japanese firms are said to be even more willing to pay up. On the other hand, the writer has never heard it alleged that bribes are offered or paid by the commercial agencies of Communist countries. These widely held opinions are part of the social setting in South Asia, as are all the elements that make up the folklore of corruption: to what extent they mirror actual business practices should be established by the research we recommend.

There is one specific difficulty facing researchers in their attempts to establish the facts about the taking and seeking of bribes, particularly on the part of higher officials and politicians. Bribes are seldom given directly; usually they go to a middleman, whether an indigenous business man nor an official at a lower level. In particular, a Western firm, operating in a South Asian country, often finds it convenient and less objectionable - to give a negotiated lump sum to a more or less professional briber, an "agent", who then undertakes a pay off all those whose cooperation is necessary for the smooth conduct of production and business. More generally, when a business transaction is to be settled, an official somewhere down the line of authority will often inform the Western businessman that a minister ~~or~~ a higher official expects a certain sum of money. Even an indigenous businessman is occasionally placed in such an indirect relationship to be bribe-seeker.

As the whole affair is secret, there is often no way of knowing whether the middleman is keeping the money for himself. Indeed, he may be using the weight of an innocent person's name to sweeten the deal and increase his take. This is, of course, one of the ways in which the folklore of corruption may exaggerate the extent of corruption at the higher levels.

In research designed to establish the facts of corruption, the role of Western business interests in the spread of corruption could be investigated best by Western researchers since they would in most cases have easier access to the confidence of the bribers, while the nationals in the several countries would probably meet fewer inhibitions and obstacles in carrying out the more general study of the spread of corruption in South Asia. But more important than such a division of labour is the researchers' seriousness of intent and their willingness to cooperate with one another.

4. THE CAUSES

The folklore of corruption, the political, administrative, and judicial reverberations of these beliefs and emotions in the anti-corruption campaigns, the actual prevalence of corruption in the several countries at different times, and the present trends—all these social facts must be explained in causal terms by relating them to other conditions in South Asia.

When we observe that corruption is more prevalent in South Asia than in the developed Western countries, we are implying a difference in mores as to where, how and when to make a personal gain. While it is, on the one hand, exceedingly difficult in South Asia to introduce profit motives and market behaviour into the sector of social life

where they operate in the West - that is, the economic sphere - it is, on the other hand, difficult to eliminate motivations of private gain from the sector where they have been suppressed in the West - the sphere of public responsibility and power. In South Asia those vested with official authority and power very often exploit their position in order to make a gain for themselves, their family, or social group. This is so whether that position is the high one of a minister, a member of the legislature, or a superior official, whose consent or cooperation is needed to obtain a license or settle a business deal, or the humble position of a petty clerk who can delay or prevent the presentation of an application, the use of a railroad car, or the prompt opening of the gates over the tracks. Certain behavioural reactions generally held to be outside profit considerations in the West are commonly for sale in South Asia; they have a "market", though certainly not a perfect one in the Western sense of the term.

The two differences are complementary and, to an extent, explain each other. Indeed, they are both remnants of the pre-capitalist, traditional society. Where, as often in South Asia, there is no market for services and goods or only an imperfect and fragmented one, and where economic behaviour is not governed by rational calculations of costs and returns - and this is true not only in subsistence farming and crafts but to a degree also in the organized sector - "connections" must fill the gap. These "connections" range all the way from the absolute dependence of attached labour in agriculture and the peasants' relations with moneylenders and landlords, which are determined by custom and power, to the special considerations that lead to nepotism even in big business. In such a setting a bribe to a person holding a public position is not clearly

differentiated from the "figt," tributes, and other burdens sanctioned in traditional pre-capitalist society or the special obligations attached to a favor given at any social level.

In pre-colonial times officials had to collect their remuneration themselves, usually without much regulation or control from above. As Furnivall points out in speaking about Burma:

The officials draw no fixed salary. Some were paid by allotment of the revenue of a particular district, but for the most part their emoluments were derived from a commission on revenue collected, or from fees paid by the parties to a case. One great source of revenue was from local tolls on the transport or sale of goods.¹

A situation then became established that one Westerner viewed as follows:

In nearly all Asian countries there has always been a tradition of corruption. Public office meant perquisites. Officials were not well paid and had to make ends meet. The well-timed bribe—which was often almost a conventional fee—was the emolument which made the wheels of administration turn more efficiently.²

1. Colonial Policy and Practice, the Santhanam Committee report's characterization of "Primitive and medieval societies". So long as the officials were loyal to the existing regime and did not resort to oppression and forcible expropriation, they were free to do as they liked. If through tactful methods, they amassed wealth for themselves or advanced their other material interests they were praised rather than censured. Often offices were hereditary and perquisites which would today amount to bribery were con-growth of the currently accepted standards of integrity".

2. Guy Wing, Spotlight on Asia.

Even where the colonial powers in later years were able to establish a higher civil service, which was honest, well paid, and manned by both colonial and indigenous personnel - as the British, in particular, succeeded in doing - they still found it difficult to enforce rigid standards at the lower levels of administration.³

Traditionally, the South Asian countries were "plural societies", in the meaning given to the term by Furnivall, and under colonial rule became increasingly so. In the present context this implies above all a fragmentation of loyalties and, in particular, little loyalty to the community as a whole, whether on the local or the national level. Such wider loyalty, backed by firm rules and punitive measures, is the necessary foundation for the modern

3. A remarkable exception to the general rule was the Netherlands Indies. The lack of corruption there was commented on above in Section 3. It resulted from cultivating incorruptibility in the higher brackets of civil service and from leaving the old village organization as undisturbed as possible. Furnivall, after stating that corruption was practically unknown in Java, explains:

"The absence of judicial corruption can easily be understood. Petty cases are settled by arbitration either out of court, or before a bench of notables with a senior and well-paid official as chairman; or they go before a civil servant or judicial officer with long service and on high pay. Moreover, the penalties imposed are so trivial that it is cheaper to be punished than to bribe a policeman or magistrate to escape punishment. Serious matters go before a bench containing at least three high judicial officers as well as laymen of good standing. It would be difficult and dangerous to bribe the whole bench. In civil cases the decision purports to follow customary law, and the people can know whether it is right; the court must justify itself to popular opinion and not to higher judicial authority. In these circumstances there is little scope for bribery." (Colonial Policy and Practice)

Western and Communist morés by which certain behaviour reactions are kept apart from considerations of personal benefits. In South Asia the stronger loyalty to less inclusive groups-family, caste, ethnic, religious, or linguistic "Community" (in the South Asian sense), and class-invites and special type of corruption we call nepotism and tends in general to encourage moral laxity. The "soft state", to which we have often referred, it generally implies a low level of social discipline¹.

When explaining the presence of corruption in South Asia, this legacy from traditional society must be taken into account mainly as part of social statics. But to explain the increase in corruption that is commonly assumed to have taken place in recent times, we must view the social system in dynamic terms. Many of the changes that have occurred have afforded greater incentives as well as greater opportunities for corruption. The winning of independence and the transition from colonial status to self-government were preceded and accompanied by profound

1. The conditions referred to so far in this section are reflected in the South Asian quest for a higher level of "moral" in business and public affairs-an improved "social climate" in which behaviour patterns are judged in terms of the modernization ideals.

In the long run, the fight against corruption will succeed only to the extent to which a favourable social climate is created. When such a climate is created and corruption becomes abhorrent to the minds of the public and the public servants and social controls become effective, other administrative disciplinary and punitive measures may become unimportant and may be relaxed and reduced to a minimum. However, change in social outlook and traditions is necessarily slow and the more immediate measures cannot be neglected in its favour.

distrubances.¹ In all South Asian countries the goal of development was accepted, while the attainment of that goal was made more difficult by the accelerated growth of population, the deterioration of the trading position, and other trends. Independence greatly increased the role of the politicians. At the same time the repatriation, following independence of a large number of officials from the metropolitan countries left South Asia few competent administrators with the stricter Western mores.² This scarcity was much greater and more damaging in Indonesia, Burma, and even Pakistan than in the Philippines, India, and Ceylon.

We commented on how the extensive - and generally increasing - resort to discretionary controls is apt to breed corruption.³ The spread of corruption, in turn, gives corrupt politicians and dishonest officials a strong vested interest in retaining and increasing controls of

1. These have been noted in various contexts in this study; see in a particular,

2. The dynamic factors hinted at in this paragraph are touched on in several places in the Santhanam Committee report.

3. The Santhanam Committee report in various contexts makes this point; see footnote. There is scope for harassment, malpractices and corruption in the exercise of discretionary powers. It is necessary to take into account the root causes of which the most important is the wide discretionary power which has to be exercised by the executive in carrying on the complicated work of modern Administration.

This type. Another contributing factor has undoubtedly been the low real wages of officials, especially those at the lower and middle levels.¹ There is also, quite generally a circular causation with cumulative effects working within the system of corruption itself. As we have indicated, it acts with special force as people become aware of the spread of corruption and feel that effective measures are not taken to punish the culprits, particularly those who are highly placed.² Among the sophisticated the situation may become rationalized in the idea that corruption, like inflation, is an unavoidable appendage of development.³

1. "We have found that low-paid Government servants are entrusted with..... matters like gradation of commodities, inspection of mines, supervision of implementation of labour laws and awards, various kinds of licensing, passing of goods at Customs etc. While the general increase in the salaries of Government Servants is a matter to be decided in the light of national economy and the tax paying capacity of the people, it may be worthwhile in the country's interest to examine whether the categories of officials who have to exercise considerable discretion in matters relating to taxation, issue of valuable permits and licences, or other wise deal with matters which require (a) high degree of integrity, should not be given special attention regard to status and emoluments"

2. "Complaints against the highly placed in public life were not dealt with in the manner that they should have been dealt with if public confidence had to be maintained. Weakness in this respect created cynicism and the growth of the belief that while governments were against corruption they were not against corrupt individuals, if such individuals had the requisite amount of power, influence and protection."

3. "A society that goes in for a purposively initiated process of a fast rate of change has to pay a social price, the price being higher where the pace of change excludes the possibility of leisurely adjustment which is possible only in societies where change is gradual."

The effect of this is to spread cynicism and to lower resistance to the giving or taking of bribes.

5.1 THE EFFECTS

One of the opportunistic rationalizations of the neglect of research on the problem of corruption is its alleged unimportance- or even its alleged usefulness in development under the conditions prevailing in South Asia. We believe that these unproved assumptions are totally wrong and that corrupt practices are highly detrimental from the point of view of the value premises applied in the present study, namely, the modernization ideals.

The remnants of pre-capitalist society referred to in the preceding section represent deterrents to development. This applies to the aforementioned contracts with Western mores and behaviour patterns-namely, while markets are nonexistent or grossly imperfect in South Asia and profit motives less effective in the economic sphere, those who have public responsibility and power are more apt to use their position for private benefit. As these contrasting conditions are complementary and sustain each other to a certain extent, the prevalence of corruption provides strong inhibitions and obstacles to development.

We have referred to the fragmentation of loyalties in South Asian societies. Development efforts must attempt to modernize people's attitudes by mitigating this fragmentation, yet in a general way corruption counter acts the strivings for national consolidation, decreases respect for and allegiance to the government, and endangers political

stability.² As we pointed out in Section 1, no South Asian government can be firmly in control unless it can convince its articulate groups that effective measures are being taken to purge corruption from public life.

From another point of view, corruption is one of the forces that help to preserve the "soft state" with its low degree of social discipline. Not only are politicians and administrators affected by the prevalence of corruption but also businessmen and, in fact, the whole population. Corruption introduces an element of irrationality in plan fulfillment by influencing the actual course of development in a way that is contrary to the plan or, if such influence is foreseen by limiting the horizon of the plan. Of particular importance is the fact that the usual method of exploiting a position of public responsibility for private gain is by threat of obstruction or delay. Where corruption is widespread, inertia and inefficiency, as well as irrationality, impede the process of decision-making and plan fulfillment.

1. Corruption is essentially a sign of conflicting loyalties pointing primarily to a lack of positive attachment to the government and its ideals. In so far as corruption shows that the new government, with its enormous task to fulfil in the new Asian world, is not yet sufficiently integrated in society and does not evoke full sympathy, enthusiasm and unfaltering loyalty from subjects and officials, it is a sign of weakness of the present political structure".

"It was the unanimous opinion of all witnesses who appeared before us," the Santhanam Committee noted, that administrative delays are one of the major causes of corruption. We agree with this view. We have no doubt that quite often delay is deliberately contrived so as to obtain some kind of illicit gratification. The influence of corruption in slowing down the wheels of administration is particularly damaging in South Asia, where the administrative system largely retains the impediments to speed and efficiency inherited from colonial times¹.

The Santhanam Committee report speaks of "speed money": It is believed that the procedures and practices in the working of Government offices are cumbersome and dilatory. The anxiety to avoid delay has encouraged the growth of dishonest practices like the system of speed money. Speed money's is reported to have become a fairly common type of corrupt practice particularly in matters relating to grant of licences, permits, etc. Generally the bribe given does not wish in these cases to get anything done unlawfully, but wants to speed up the process of the movement of files and communications relating to decisions. Certain sections of the staff concerned are reported to have got into the habit of not doing anything in the matter till they are suitably persuaded. It was stated by a Secretary that even after an order had been passed, the fact of the passing of such order is communicated to the person concerned and the order itself is kept back till the unfortunate applicant has paid appropriate gratification to the subordinate

1. For India, see an excellent critique by Paul H. Appleby in Re-examination of India's Administrative System, Government of India press, New Delhi 1956.

concerned, Besides being a most objectionable corrupt practice, this custom of speed money has become one of the most serious causes of delay and in efficiency.

The Popular notion, occasionally expressed by Western students of conditions in South Asia that corruption is a means of speeding up cumbersome administrative procedures, is palpably wrong.³

At the same time, when suspicion of corruption is rampant, a natural protective device is to spread and share the responsibility for decisions to the maximum extent possible. Apart from this, the most honest official will tend to shun taking personal responsibility if he works in an administrative system widely suspected of being corrupt; the present writer has often heard testimony to

3. The London Times August 5, 1964) reports: "Money of these instances of bribery are those in which the citizen pays in order to get what he is entitled to anyway, and some students of Indian affairs have argued that this is necessary and not harmful lubricant for a cumbersome administration. One American writer, Mr. Myron Weiner, has put it like this: 'The system of corruption..... is a highly stable one. It is a regularized relationship. Businessmen and agriculturalists often regard the payment of bakshash to be as much a part of the application for government services as filling in a form. The rates of payment are generally based upon the rank of the officer, the character of the services being requested and the financial means of the claimant. The rates are more or less predictable and on the whole (there are notable exceptions, however) moderate. Mr. Weiner's conclusion is that this corruption is simply a way that citizens have found of building rewards into the administrative structure in the absence of any other appropriate incentive system."

The reporter comments that: As a means of accelerating the sluggish meandering circulation of a file within a department this might be all very well; but speed money, belying the name, actually has the effect of a brake on administration, slowing it down even further. Delay will deliberately be caused in order to invite payment of a bribe to accelerate it again."

this effect. Pau appleby has criticized the Indian administration for its "excessive bureaucracy," which he relates to the "timidity of public servants at all levels, making them unwilling to take responsibility for decisions, forcing decisions to be made by a slow and cumbersome process of reference and conference in which everybody finally shares dimly in the making of every decision," and he blames it for the fact that "not enough gets done and what gets done is done too slowly".¹ He accuses Parliament of being "the chief citadel of opposition to delegation of powers, the need for which is the worst shortcoming of Indian administration," but he could have added the press and articulate opinion generally. A situation is created that is vividly described by an Indian author:

To avoid direct responsibility for any major policy decision, efforts are made to get as many departments and officials associated with such decisions as is considered desirable. Again, such consultations must be in writing; otherwise there would be nothing on record. Therefore a file must move - which itself requires some time, from one table to another and from one Ministry to another for comments and it is months before the decision is conveyed to the party concerned. Even where the facts make the decision obvious and involve no significant departure from the established policy, such consultations are considered necessary for "safety." The alternative is a conference of the representatives of departments or Ministries concerned.

1. Re-examination of India's Administrative System.

As it is thought necessary that representatives of all departments which may have even a remote interest in the question should be present, sufficient notice of the meeting has to be given and dates changed to suit convenience of important officials even where they have little direct interest in it. Generally no action is taken on the decisions of such meeting until the minutes are approved and circulated. The increasing popularity of the conference has led to senior officials spending most of their office time in such meetings, delaying, thereby, the disposal of files.

In General conformity with the tabec noted in Section 1, the two authors cited, like everybody else who takes part in the lively discussion about the inherited faults of the Indian administrative system and the difficulties involved in improving it, avoid relating their observations to the prevalence of corruption, the frequent allegations of corruption, and the individual official's own interest in preserving cumbersome procedures - if he is dishonest they may increase his opportunities to extract a bribe, and if he is honest they may serve to protect him from suspicion. But undoubtedly there is such a relation and it is important. Authority cannot be efficiently delegated unless those in administrative positions are incorrupt and this fact is generally recognized. In a society where corruption is prevalent, circular causation with cumulative effects operates in other ways as well. When people become convinced rightly or wrongly, that corruption is wide-spread, an official's incorruptibility will tend to be weakened. And should he resist corruption, he will find it difficult to fulfil his duties. This, again, contributes to inertia and inefficiency in a

Society.¹

6. REMEDIES

Recognition of the very serious effects of corruption in South Asian countries raises the practical problem of what can be done to eradicate it. In all South Asian countries there have from time to time been anti-corruption drives and anti-corruption legislation. In recent years there has been, in India particularly, a growing public anxiety about corruption. The Indian Home Minister, Gulzarilal Nanda, regarded the task of eradicating corruption as his "main occupation" for some time and opened his house for daily sessions to receive complaints about corruption.

The important Santhanam Committee report was an outgrowth of this movement. While restricted to general judgements about the actual facts of corruption and their causes and effects, based on the Committee members' own information and the testimony of numerous witnesses, the report is more specific when analyzing administrative procedures that create opportunities for malfeasance and making recommendations for reform. It urges simpler and

1. Having become friendly with the chief police officer in the district of New Delhi where he lived for a time, the writer once complained to him about the taxi drivers' habit of ignoring all traffic rules. Why didn't he order his policemen to enforce the rules? How could I, " he answered. "If one of them went up to a taxi driver, the driver might say: 'Get away, or I will tell people that you have asked me for ten rupees. If the policemen then pointed out that he had not done it, the rejoinder of the tax driver could be: 'Who would believe you?'"

more precise rules and procedures for political and administrative decisions that affect private persons and business enterprises and also closer supervision. A main theme of these proposals is that discretionary powers should, insofar as possible, be decreased: "While we recognize that it would not be possible to completely eliminate discretion in the exercise of powers it should be possible to devise a system of administration which would reduce to the minimum, even if there is a certain seeming loss of perfection, the need for exercise of personnel discretion consistently with efficiency and speedy disposal of public business. There muncration of low paid civil servants should be raised and their social and economic status improved and made more secure. The vigilance agencies, including special police departments, should be strengthened. The penal code and other laws and procedures should be changed so that punitive action against corrupt officials can be pursued more speedily and effectively. Measures should also be taken against these in the private sector who corrupt public servants. Among such measures the Committee proposes that income tax reports and assessments be made public and that the practice of declaring public documents confidential be limited. The Committee recognizes that ministers and legislators must be above suspicion and proposes codes of conduct for these two categories of politicians and special procedures for complaints against them. It proposes that business enterprises be forbidden to make contributions to political parties, that persons making bona fide complaints be protected, and that, on the other hand, newspapers be prosecuted if they make allegations without supporting evidence.

These and other proposals deserve careful study by the student of corruption in South Asia. The Committee concludes that "while it is possible to deal quickly with some forms of corruption, it is in general a long-term problem which requires firm resolve and persistent and favour for many years to come. The big questions are whether the government will take action along the lines suggested, and to what extent such action will be effective within a national community when what the Committee refers to as "the entire system of moral values and of the socio-economic structure" has to be changed.

When considering the prospects of reform in countries where corruption is so embedded in institutional and attitudinal remnants of traditional society and where almost everything that happens increases incentives and opportunities for personal gain, the public outcry against corruption must be regarded as a constructive force. This holds true even when this reaction is basically only the envy of people who themselves would not hesitate to engage

1. On October 29, the Government of India released the text of a code it has formulated for the conduct of Ministers at the Centre and in the States. The code requires disclosure by a person taking office as Minister of the details of his and his family's assets and liabilities as well as business interests. He is also required to sever all connections with the conduct of any business". (Indian and Foreign Review, November 15, 1964) It is a hopeful sign that this was one of the proposals by the Committee in regard to the implementation of which a leading article, "Guarding the Guards," in The Economic Weekly, April 11, 1964, had expressed deep skepticism. Later, the eagerness for reform seems to have died down. The reports are that corruption in India has recently been increasing.

in corrupt practices had they a chance, and even though the common awareness of corruption is apt to spread cynicism. As those people who can benefit personally from corruption should support a government intent on serious reforms. What the people - and the outside observer¹ generally demand is punishment of the offenders. Resentment stems especially from the belief that ministers and high officials go unpunished.

When discussing the practical problem of how to fight corruption, knowledgeable persons in South Asia frequently point out that one should distinguish between traditional corruption on the part of petty officials, which in many cases amounts merely to the expectation of a customary fee by a person with a very low salary (though undoubtedly it often also injects an element of unnecessary delay and arbitrariness into business activity), and the extorting of big bribes by politicians and higher officials. It is usually stressed that corruption among minor officials cannot be combatted if it is not first stamped out at higher levels; this latter problem is thus given a strategic role. In some

1. "Nothing would do as much to increase the faith of the common people in their governments as the prosecution of a few of those whose unwholesome activities are unnoticed or connived at by the leaders.... If those in positions of authority are not above suspicion, who can blame the small man for committing similar offences? This kind of thing is infectious, and ordinary people tend to copy the conduct of those at the top." (Sydney D. Bailey, *Parliamentary Government in Southern Asia*, Institute of Pacific Relations, New York, 1953.)

branches of public administration there is a systematic sharing of bribes between politicians and officials at different levels of responsibility. When there is not, and each takes care of his own interests, a tacit collusion often exists nevertheless, obstructing remedial action at all levels. The conclusion that it is quite hopeless to fight corruption if there is not a high degree of personal integrity at the top levels is obviously correct.

Great Britain, Holland, and the Scandinavian countries, where corruption is now quite limited, were all rife with it two hundred years ago and even later, indeed untill the liberal interlude between Mercantilism (with its many vestiges of feudalism) and the modern welfare state.¹ It was during that liberal interlude that the strong state came into being. One of its characteristics was a system of politics and administration marked by a high degree of personal integrity. While the liberalization of production and trade and particularly the liquidation of the craft

1. As noted in Section 1, the United States is still not as free from corruption, particularly on the state and city levels, as the countries mentioned in the text. The lag in the United States is due to many interrelated facts: the spoils system since president Jackson, the consequent relative lack of a firmly established and politically independent civil service, the heterogeneity of the population (in particular, the clustering in the cities of disadvantaged coloured and immigrant groups), the rise of machine politics, and so on. However, for several decades there has been a development towards greater integrity among both politicians and administrators in the United States as part of the general movement towards closer national integration.

guild system and the arrangements protecting urban commerce, inherited from the previous area, have been closely studied, much less interest has been manifested by political and economic historians in how the corrupt state was changed into the strong, incorrupt liberal state. It was probably accomplished by a strengthening of morals, particularly in the higher strata, together with salary reforms in the lower strata, often by transforming customary bribes into legalized fees.

NATURE OF THE PROBLEM

Definition

2.1 The problem of corruption is complex having roots and ramifications in society as a whole. In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life. In this sense, the problem would have to be viewed in relation to the entire system of moral values and socio-economic structure of society which we could not undertake. We are primarily concerned with the investigation of the problem in so far as it relates to the Central Government and its employees; but even for this limited purpose, we shall have to consider it in a somewhat wider setting.

2.2 It is difficult to define precisely the word 'corruption'. Section 161, Indian Penal Code, states the most common form of corruption as follows:-

"Whoever, being or expecting to be a public servant, accepts, or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or dis-service to any person, with the Central or any State Government or Parliament or the Legislature of any State or with any public servant as such,*****

SOURCE: K. Santhanam, Report of the Committee on Prevention of Corruption, Govt. of India, MHA, New Delhi, 1964.

Contd/....

Section 5(1) of the Prevention of Corruption Act, 1947, defines criminal misconduct of a public servant in the discharge of his duty.

Section 123 of the Representation of the People Act, 1951 defines corrupt practices in relation to elections.

While it is true that the securing of some kind of pecuniary or other material advantage directly or indirectly for oneself or family, relative or friends, constitutes the most common form of corruption, other forms of the evil are coming into existence in the ever increasing complexities of modern society.

A Perspective

2.3 Corruption in one form or another has always existed. Kautilya in his Arthashastra refers to the various forms of corruption prevalent in his times. Nor is corruption peculiar to India. In his book on "Ethics of Government" Paul H. Douglas, Senator from Illinois, points out, that corruption was rife in British public life till a hundred years ago and in U.S.A. till the beginning of this century. Nor can it be claimed that it has been altogether eliminated anywhere.

2.4 In primitive and medieval societies the scope of public authority was minimum. Many of the matters that were looked after by the community have now become a function of the State. The few authorities which existed for the collection of taxes, administration of justice or other purposes did not act according to any definite written laws or rules, but largely at their discretion subject to good conscience and equity and directives from the higher authorities. So long as the officials were loyal to the existing regime and did not resort to oppression and forcible expropriation, they were free to do as they liked.

If through tactful methods, they amassed wealth for themselves or advanced their other material interests they were praised rather than censured. Often offices were hereditary and perquisites which would today amount to bribery were con- growth of the currently accepted standards of integrity.

The modern conception of integrity of public servants in the sense that they should not use their official position to obtain any kind of financial or other advantage for themselves, their families or friends is due to the development of the rule of law and the evolution of a large, permanent public service. Levy of taxation by law, parliamentary control of expenditure, and the regulation of conduct of public servants by rules, the breach of which would subject them to penalties including dismissal and prosecution in courts, contributed to the present notion of integrity of public servants. The fact that fair, honest and just principles are adopted and declared in matters like recruitment, promotions, terminal benefits and other conditions of service of public services, has further encouraged the growth of the the currently accepted standards of integrity.

2.5 Till about the beginning of the Second World War corruption was prevalent in considerable measure amongst revenue, police excise and Public Works Department officials particularly of the lower grades and the higher ranks were comparatively free from this evil. The smaller compass of State activities, the "great depression" and lack of fluid resources set limits to the opportunities and capacity to corrupt or be corrupted. The immense war efforts during 1939 to 1945 which involved an annual expenditure of hundreds of crores of rupees over all kinds of war supplies and contracts created unprecedented opportunities for acquisition of wealth by doubtful means. The war time controls and scarcities provided ample opportunities for bribery, corruption, favouritism, etc. The then Government subordinated

Contd/....

all other considerations to that of making the war effort a success. Propriety of means was no consideration if it impaded the war effort. It would not be for wring to say that the high water-mark of corruption was reached in India as perhaps in other countries also, during the period of the Second World War.

2.6 After the peaceful transfer of power, the new popular Governments took office in an atmosphere surcharged with patriotism and high ideals. In spite of the fact that the new Governments were faced with grave problems that arose after the partition of the country and other urgent tasks of reconstruction and had to run the administration after having lost the services of many senior and experienced officers, the new Governments did exhibit commendable energy in dealing with the problem of corruption. We mention here only the steps taken by the Central Government. The Delhi Special police Establishment was put on a permanent footing by the Delhi Special Police Establishment Act, 1946. The Prevention of Corruption Act became law on 11th March, 1947. The Bakshi Tek Chand Committee was set up in 1949 to review the working of the Prevention of Corruption Act, 1947, to make recommendations with regard to any improvement that might be considered necessary in the laws as well as in regard to the machinery for enforcing them, to assess the extent of success achieved by the Special Police Establishment in combating corruption and to make recommendation regarding continuance, strengthening, etc. of the Special Police Establishment. Some Ministers in Rajasthan and Vindhya Pradesh were prosecuted in 1949-50. There was no hesitation to make over inquiries into allegations against Ministers to the Special Police Establishment. The Railway Corruption Inquiry Committee under the Chairmanship of Acharya Kripalani was appointed in October, 1953. The Administrative Vigilance Division was set up in August, 1955 and the vigilance units in the Ministries/

Contd/...

Departments came into existence. The Vivian Bose Commission was appointed in December 1956. Some leading industrialists of the country were prosecuted in the decade between 1950-1960. During this decade the number of cases investigated by the Special Police Establishment alone increased almost two-fold.

Yet, various factors have operated to nullify in some measure the anti-corruption drive. The sudden extension of the economic activities of the Government with a large armoury of regulations, controls, licences and permits provided new and large opportunities. The quest for political power at different levels made successful achievement of the objective more important than the means adopted. Complaints against the highly placed in public life were not dealt with in the manner that they should have been dealt with if public confidence had to be maintained. Weakness in this respect created cynicism and the growth of the belief that while Governments were against corruption they were not against corrupt individuals, if such individuals had the requisite amount of power, influence and protection.

Causes

2.7 When India became independent, the country was mainly an agricultural hinterland of the other highly developed industrial countries, with a weak industrial base, low incomes, low consumptions, gross unemployment and under-employment, low capital formation, lack of fruitful channels of investment and all the other indices of backwardness. The climate for integrity had been rendered unhealthy by the war time controls and scarcities, the post-war flush of money, and the consequent inflation. After Independence, a conscious and deliberate efforts is being made to change these conditions by undertaking reforms and reconstruction all directions

Contd/....

simultaneously, the emphasis, however, being on the economic sector. The attempt is to accelerate the pace of development in such a manner as to make good the loss of time, the loss having been spread over two centuries. The direction of change is modernisation. A society that goes in for a purposively initiated process of a fast rate of change has to pay a social price, the price being higher where the pace of change excludes the possibility of leisurely adjustment which is possible only in societies where change is gradual. Thus, there has come about a certain amount of weakening of the old system of values without its being replaced by an effective system of new values. The relative fixity of ways and aspirations of former times and the operation of a moral code tending towards austerity, frugality and simplicity of life, profoundly influenced the mechanism of social control and social responses. In the emerging Indian society with its emphasis on purposively initiated process of urbanisation, alongside of the weakening of the social mores of the simpler society, signs are visible of materialism, growing impersonalism, importance of status resulting from possession of money and economic power, groupness or inability to deal with deviations from the highest standards of political, economic and social ethics, profession of faith in the rule of law and disregard thereof where adherence thereto is not convenient.

2.8 The Government of the country assumed the new responsibilities at a time when the administrative machinery had been considerably weakened by (a) war-time neglect, and (b) the departure of a large number of experienced officers, which necessitated rapid promotions including those of some unproven men and recruitment of a large number of officers in various grades which inevitably caused a dilution of experience

Contd/...

and ability. The rapid expansion of Governmental activities in new fields involving expenditure of the order of 1,000 crores of rupees a year afforded to the unscrupulous elements in the public service and public life unprecedented opportunities for acquiring wealth by dubious methods. To this must be added the unfortunate decline of the real incomes of various sections of the community, and particularly that of the salaried classes, a large part of which is found in Government employment. Though efforts have been made by the two Pay Commissions to revise the pay scales, it has to be conceded that some classes of Government servants have had to face an appreciable fall in the standard of living. Though this cannot be pleaded in extenuation of the fall in the standard of integrity, the fact remains that economic necessity has, at least in some cases, encouraged those who had the opportunities to succumb to temptations.

2.9 The assumption of new responsibilities by the Government has resulted in the multiplication of the administrative processes. As the Law Commission pointed out in its fourteenth report there is a vast field of administrative action in which administrative authority may act out-side the strict scope of law and propriety without the injured citizen being in a position to obtain effective redress. Administrative power and discretion are vested at different levels of the executive, all the members of which are not endowed with the same level of understanding and strength of character. Where there is power and discretion, there is always the possibility of abuse, more so when the power and discretion have to be exercised in the context of scarcity and controls and pressure to spend public money. The absence of a machinery for appeals other than inside the hierarchy and of a machinery for redress of grievances contributed to the growth of an impression of arbitrariness on the part of the executive. Consequently, there has been a phenomenal increase in the number of peddlers of influence.

Contd/...

2.10. It is believed that the procedures and practices in the working of Government offices are cumbersome and dilatory. The anxiety to avoid delay has encouraged the growth of dishonest practices like the system of speed money. 'Speed Money' is reported to have become a fairly common type of corrupt practice particularly in matters relating to grant of licences, permits, etc. Generally the bribe given does not wish, in these cases, to get anything done unlawfully, but wants to speed up the process of the movement of files and communications relating to decisions. Certain sections of the staff concerned are reported to have got into the habit of not doing any thing in the matter till they are suitably persuaded. It was stated by a Secretary that even after an order had been passed the fact of the passing of such order is communicated to the person concerned, and the order itself is kept back till the unfortunate applicant has paid appropriate gratification to the subordinate concerned. Besides being a most objectionable corrupt practice, this custom of speed money has become one of the most serious causes of delay and inefficiency.

2.11. There is a general impression that it is difficult to get things done without resorting to corruption. Scope for corruption is greater and the incentive to corrupt stronger at those points of the organisation where substantive decisions are taken in matters like assessment and collection of taxes, determination of eligibility for obtaining licences, grant of licences, ensuring fair utilisation of licences and goods obtained thereunder, giving of contracts, approval of works and acceptance of supplies. We were told by a large number of witnesses that in all contracts of construction, purchases, sales, and other regular business on behalf of the Government, a regular percentage is paid by the parties to the transaction, and this is shared in agreed proportions among the various officials concerned. We were told that in the constructions of the Public Works Department, seven to eleven per cent was

Contd/...

usually paid in this manner and this was shared by persons of the rank of Executive Engineer and below down to the Mistry, and occasionally even the superintending Engineer might have a share. In the Railways, besides the above, similar practice in connection with allotment of wagons and booking of parcels particularly perishables, is said to be in vogue. Wherever purchases have to be made, such percentage is paid for acceptance of inferior quality of goods. In all cases, failure to pay the percentage results invariably in difficulty and delay in getting the bills paid. In the higher ranks, differences and disputes about specifications, use of inferior quality of material, and other technical issues are utilised for the purpose. It is not always the Government servant who takes the initiative in the matter. Frequently enough it is the dishonest contractors and suppliers who, having obtained the contract by under-cutting, want to deliver inferior goods or get approval for sub-standard work and for this purpose, are prepared to spend a portion of their ill-earned profit.

2.12 In addition to the various circumstances mentioned above, we are of the opinion that two of the major contributory factors for the growth of corruption are, firstly, the partially acknowledged unwillingness to deal drastically with corrupt and inefficient public servants and, secondly, the protection given to the services in India, which is greater than that available in the more advanced countries. It was distressing to hear heads of departments confess that, even where they were morally convinced that one of the officials working under them was corrupt, they were unable to do anything because of the difficulties in obtaining formal proof, finding or conviction. They could not even make an adverse entry in the confidential roll without their being required to justify such an entry with proof when it was challenged after its communication to the Government.

servant concerned. Article 311 of the Constitution as interpreted by our courts has made it very difficult to deal effectively with corrupt public servants. When the question of amendment of article 311 came up before Parliament the issue of corruption was altogether ignored and overwhelming stress was laid upon protection of the individual Government servant. This is an important issue which deserves to be urgently reconsidered by Parliament.

2.13 The advance of technological and scientific development is contributing to the emergence of 'mass society', with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all sections of Society to appreciate in full this need results in the emergence and growth of white-collar and economic crimes, renders enforcement of the laws, themselves not sufficiently deterrent, more difficult. This type of crime is more dangerous not only because the financial stakes are higher but also because they cause irreparable damage to public morals. Tax-evasion and avoidance, sharepausing, malpractices in the share market and administration of companies, monopolistic controls, usury, under-invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are, some examples of white-collar crime.

2.14. Corruption can exist only if there is some one willing to corrupt and capable of corrupting. We regret to say that both this willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes. The ranks of these classes have been swelled by the speculators

Contd/.....

and adventures of the war period. To these, corruption is not only an easy method to secure large unearned profits but also the necessary means to enable them to be in a position to pursue their vocations or retain their position among their own competitors. It is these persons who indulge in evasion and avoidance of taxes, accumulate large amounts of un-accounted money by various methods such as obtaining licenses in the names of bogus firms and individuals, trafficking in licenses, suppressing profits by manipulation of accounts to avoid taxes and other legitimate claims on profits, accepting money for transactions put through without accounting for it in bills and accounts (on-money) and under-valuation of transactions in immovable property. It is they who have control over large funds and are in a position to spend considerable sums of money in entertainment. It is they who maintain an army of liaison men and contact men, some of whom live, spend and entertain ostentatiously. We are unable to believe that so much money is being spent only for the purpose of getting things done quickly. It is said that, as a large majority of the high officials are incorruptible and are likely to react strongly against any direct attempt to subvert their integrity, the liaison and contact men make a careful study of the character, tastes and weaknesses of officials with whom they may have to deal and that these weaknesses are, then, exploited. Contractors and suppliers who have perfected the art of getting business by under-cutting, of making good the loss by passing off sub-standard works and goods generally spare no pains or expenditure in creating a favourable atmosphere. Possession of large amounts of unaccounted money by various persons including those belonging to the industrial and commercial classes is a major impediment in the purification of public life. If anti-corruption activities are to be successful, it must be recognised that it is as important to fight these unscrupu-

Contd/....

corruption as to eliminate corruption in the public services. In fact they go together.

We have to point out, with regret, that while a number of Trade Associations and State Chambers of Commerce readily accepted our invitation to help us with their views and advice, the Federation of Indian Chambers of Commerce which could have given powerful support to the fight against corruption would not even accept our invitation to meet us.

2.15. The tendency to subvert integrity in the public services instead of being isolated and aberrative is growing into an organised, well-planned racket. We recognise that while considerable success had been achieved in putting anti-corruption measures on a firm footing there is much that remains to be done. It is a matter of profound concern that in the past there has been a certain amount of complacency in dealing with the situation.

2.16 It was represented to us that corruption has increased to such an extent that people have started losing faith in the integrity of public administration. We heard from all sides that corruption has, in recent years, spread even to those levels of administration from which it was conspicuously absent in the past. We wish we could confidently and without reservation assert that at the political level, Ministers, Legislators, party officials were free from this malady. The general impressions are unfair and exaggerated. But the very fact that such impressions are there causes damage to the social fabric. That such impressions should have come into existence in so short a time after the people of this country had given themselves a Constitution of their own is all the more distressing if it is remembered that the struggle for freedom in India was fought

on a particularly high moral plane and was led by Mahatma Gandhi who personified integrity. The people of India rightly expected that, when the governance of the country passed into the hands of the disciples of the Father of the Nation who were in their own individual capacities known for high character and ability, Governments in India, at the Centre and the States would set up and achieve a standard of integrity, second to none in the world, both in the political and administrative aspects. It has to be frankly admitted that this hope has not been realised in full measure. But it has to be noted that a good percentage of our public servants, even those who have opportunities, maintain and function in accordance with, strict standards of integrity. We have to base the efforts for a through cleansing of our public life, on this solid and hard core of honest public servants. It will be our endeavour in this report to strengthen their hands, to deal drastically with all those who have come to believe that they can corrupt and be corrupt with impunity. Before we can do this, we must face frankly all factors which have tended to corrupt our public life.

SOURCE: Report of the Committee on Prevention of Corruption. Govt. of India, Ministry of Home Affairs.

PREVENTIVE MEASURES

1. Corruption cannot be eliminated or even significantly reduced unless preventive measures are planned and implemented in a sustained and effective manner. Preventive action must include administrative, legal, social, economic and educative measures.
2. The main effort for checking corruption and for creating an environment which will sternly discourage any temptation to stray away from the path of integrity must come from within the Ministry/ Department. The responsibility in this behalf should not only be clearly recognised, emphasised and accepted but it should also be understood that it is not sufficient to take action when some case comes to notice and that it is far more important to be continuously on the watch for and discover the sensitive spots. A systematic and thorough review of the laws, rules, procedures and practices should be undertaken for the purpose of listing (a) discretionary powers (b) levels at which such powers are exercised (c) the manner of exercise of such powers (d) the control exercised within the hierarchy over the exercise of such powers (e) the points at which citizens come into contact with the Ministry/ Department and the purposes for which they do so.
3. Besides, a through study should be made in respect of each Ministry/ Department/undertaking of the extent, the possible scope and modes of corruption, preventive and the remedial measures prescribed, if any, and their effectiveness. We regret to notice that such an attempt does not appear to have been made so far. We recommend that such studies should be started on a priority basis in respect of each Ministry/ Department/ undertaking and the Central Vigilance Commission should also pay

SOURCE: K. Santhaman, Report of the Committee on Prevention of Corruption, Govt. of India, MHA, New Delhi, 1964.

attention to this important piece of work for which purpose Government may provide the necessary staff and other facilities.

4. Representatives of business and trade, whom we met in Calcutta and Bombay almost unanimously pointed out that non-association of trade organisations or their representatives in matters like licensing and allocation of scarce commodities encouraged malpractice and corruption to some extent. They also pointed out that Government has to depend upon the reports submitted by its officers working in the field regarding the worth of the applicant. These officers are not always in a position to assess correctly the actual position. However, every trade organisation worth the name knows who in the trade are genuine and men of character and who are not. It was represented to us that if trade organisations were brought into the picture they should be able to make their knowledge available to Government. Some of the responsible trade organisations declined, rightly in our view, to undertake the full responsibility in matters relating to grant of licences and allocation of scarce goods. They were willing to act only in an advisory capacity. We consider this a very helpful attitude and it should be encouraged. We recognise that unless the trade organisations are really representative many practical difficulties would arise. These organisations are voluntary and except expulsion no penal action can be taken. Even expulsion from the organisation does no amount to much as it does not result in rendering the expelled member ineligible for obtaining licences or permits. Thus there is no incentive for becoming a member of a trade organisation and cases have come to notice where persons or establishments, who or which remained outside the concerned trade organisations got all they wanted by direct approaches to Government at different levels including the highest. Such cases give rise to a widespread feeling that if proper approaches could be arranged anything can be got done.

Such impressions cause damage in no small measure. We would, therefore, recommend that serious thought should be given as to how trade associations or their representatives could be associated in the matter of granting licences and allocation of scarce goods. We consider that membership of a recognised trade organisation should be a necessary condition of eligibility for obtaining a licence or a permit. The organisation should screen the capacity of the applicants, their past performance and conduct and make recommendations to the licensing authority. These organisations may also be usefully associated in investigating modes of misuse and misutilisation of goods obtained under licence and modes of manipulation of prescribed rules, procedures and forms for obtaining underserved advantage. We recognise that many details will have to be worked out like the principles of recognitions, protection of the small trader, prevention of arbitrariness etc. We suggest that this question may be dealt with by the concerned Ministries in consultation with the trade organisations.

5. The representatives of the trade organisations and other non-officials, whom we met emphasised that apart from other things the major causes of corruption are:-

- (i) Administrative delays;
- (ii) Governments taking upon themselves more than what they can manage by way of regulatory functions;
- (iii) Scope for personal discretion in the exercise of powers vested in different categories of Government servants; and
- (iv) Cumbersome procedures of dealing with various matters, which are of importance to citizens in their day-to-day affairs.

6. There is considerable force in what has been represented to us, and we deal with each of these below:-

6.1 (i) Administrative delays:

It was the unanimous opinion of all witnesses who appeared before us that administrative delays are one of the major causes of corruption. We agree with this view. We have, no doubt, that quite often delay is deliberately contrived so as to obtain some kind of illicit gratification. Administrative delay must be reduced to the utmost extent possible and firm action should be taken to eliminate all such causes of delays as provide scope for corrupt practices. We are aware that the proposed Department of Administrative Reforms will be dealing with this problem in details. We recommend that the following steps may be taken to deal with this problem:-

(a) Each Ministry/Department/undertaking should immediately undertake a review of all existing procedures and practices confind out the cause of delay, the points at which delay occurs and to devise suitable steps to minimise the possibility of delay.

(b) Time-limits should be prescribed, if not already done, for dealing with receipts, files etc., and these should be strictly enforced. Superior officers should consider it their responsibility to find out whether in any particular matter there has been any avoidable delay and call the persons responsible for the delay to account.

(c) All notings at a level lower than that of Under Secretaries should be avoided. The responsibility of the Section should be only that of putting up previous papers and precedents. This procedure should be strictly observed in Ministries/ Departments which have to deal with the grant of licences or permits of various kinds.

(d) The levels at which substantive decision could be taken should be prescribed and any attempt to involve as many as possible should be discouraged and dealt with severely, if found to be persisted in.

6.2(ii) Government taking upon themselves more than what they can manage by way of regulatory functions.

We are not in a position to assess the correctness of this criticism. But it is to be recognised that in all those fields where Government interferes to regulate and control there is scope for abuse. While it is not possible to accept the proposition that Government should divest itself of all regulatory functions and powers of control, it appears that it would be desirable for each Ministry/Department to undertake a review of the regulatory functions which are its responsibility and also examine whether all of them are necessary and whether the manner of discharge of those functions and of the exercise of powers of control are capable of improvement. We recommend that such a review be made.

6.3(iii) Much scope for personal discretion in the exercise of powers vested in different categories of Government servants.

Discretionary powers are exercised by different categories of Government servants all of whom are not endowed with a high sense of dedication and integrity in equal measure. There is scope for harassment, malpractices and corruption in the exercise of discretionary powers. While we recognise that it would not be possible to completely eliminate discretion in the exercise of powers it should be possible to devise a system of administration which would reduce to the minimum, even if there is a certain seeming loss of perfection, the need for exercise

of personal discretion consistently with efficiency and speedy disposal of public business. Even so there would be quite a considerable area where exercise of discretion could not be eliminated. It will, therefore, be necessary to devise adequate methods of control over exercise of discretion. In the more advanced countries various methods of such control have been devised. We recommend that this should be studied and a system of control should be devised keeping in view the needs of the situation, the difficulties that arise on account of the vastness of our country and the basic principles which are enshrined in our Constitution and jurisprudence.

6.4(iv) Cumbersome procedures of dealing with various matters which are of importance to citizens in their day-to-day affairs.

The citizens of this country have to seek the help of administration in various matters which are of importance to their day-to-day affairs. Due to various reasons the current procedures are such as make it really difficult for the citizens to get quick relief. Besides, quite a big section of our citizens are not trained or equipped to say what they want clearly and precisely. This is partly due to lack of awareness of the rights and responsibilities and of the procedures of Government. Therefore, they find it necessary to have recourse to touts and intermediaries. We recommend that a serious attempt should be made to educate the citizens in regard to these matters and also make suitable arrangements which would provide an easy access to administration without the need of the intervention of touts and intermediaries.

7. It is not possible for us to go into these matters in any great detail as it would have meant a very detailed study of the working of various Ministries and Departments. Apart from

this it would have been very much out of scope of our terms of reference to undertake such a study. We, therefore, leave these questions to be examined by the respective Ministries/ Departments who, we hope, would assign high priority to these matters.

8. We have found that low-paid Government servants are entrusted with the responsibilities of inspection, supervision, grant of licences, in matters like gradation of commodities, inspection of mines, supervision of implementation of labour laws and awards, various kinds of licensing, passing of goods at Customs etc. While the general increase in the salaries of Government servants is a matter to be decided in the light of national economy and the tax paying capacity of the people, it may be worthwhile in the country's interest to examine whether the categories of officials who have to exercise considerable discretion in matters relating to taxation, issue of valuable permits and licences, or otherwise deal with matters which require high degree of integrity, should not be given special attention regarding status and emoluments. This appraisers and examiners in the Customs, Inspectors in the Excise and the Income Tax Departments, supervisory personnel in the Central Public Works Department, Railways and postal Departments and analogous categories should be made to feel that the improvement of their condition is a matter of special concern to the Government. We also feel that undue economy in the number of officers is not desirable. We were told by a number of witnesses that where any cadre consists of both direct recruits and persons promoted from subordinate services, the standard of integrity of direct recruits is comparatively higher. While we are unable to endorse any such sweeping generalisation, we feel that this aspect requires to be looked into carefully and if the general impression has any basis in truth it may be necessary to review their respective proportions from this point of view.

9. Even more important than improvement in the scales of salaries is the need to provide housing, medical facilities for the Government servant and his family, and assistance towards the education of children, especially of those who have to serve far away from their own States. The example of the Railways which are establishing hostels in suitable centres of education, where the sons and daughters of the railway employees can be maintained at charges which can be reasonably borne by the parents, deserves to be followed by other Central Departments.

10. We consider that the provision of housing and wherever possible, in colonies, will be a valuable aid in the promotion of integrity. If officials of the Income-tax, Customs and Excise Departments are forced to find their own accommodation in such big cities as Bombay, Calcutta and Madras, they become obliged to landlords and their agents. We would earnestly suggest to Government to undertake the provision of housing on an adequate scale, and till then to have a sufficient number of requisitioned accommodation to accommodate all their staff. When Government servants of the same department or allied departments live in a colony, it is not easy to indulge in unsocial practices without being noticed or talked about. Almost every head of Department who met us impressed upon us the need and the salutary effects of adequate housing.

11. In the Ministries/Departments dealing with the economic affairs of the country and those which have to spend large amounts of money on construction and purchases the temptation to stray away from the path of integrity is greater and it is here that the undesirable type of contact men and touts flourish. We consider that in these Ministries steps should be taken immediately to compile informal codes of conduct for the

different categories of Government servants regarding participation in entertainment and availing themselves of other facilities from those who may have or are likely to have official dealings with them and suitable procedures should be evolved to encourage voluntary adherence to those codes. The example must be set by superior officers.

12. Every officer of superior status under whom a number of Gazetted officers are working directly should take steps to ascertain personally whether there is any reason to doubt or suspect the integrity of any of these officers. This would bring the superior officers in greater contact with their junior officers and this would help in ensuring that they do not stray from the path of virtue.

13. Some of the other more important preventive measures are:-

(i) Great care should be exercised in selecting officers for appointment to high administrative posts. Only those whose integrity is above board should be appointed to these posts.

(ii) At the time of making selections from non-gazetted to gazetted ranks for the first time all those whose integrity is doubtful should be eliminated.

(iii) Every officer whose duty it is to sponsor a name for promotion should be required to record a certificate that he had seen the record of service of the Government servant and he is satisfied that the Government servant is a man of integrity.

(iv) Exigencies of public service require grant of extension or re-employment of Government servants who have attained the age of superannuation and are about to retire or retired. Such servants are also employed in the public

sector undertakings. We recommend that an essential condition for the grant of extension or re-employment should be that the person concerned has had a good reputation for integrity and honesty. If this condition is not fulfilled the person concerned should not be considered eligible for grant of extension or re-employment.

(v) A good deal of harm is done by vague talk about corruption. This can be reduced only if there are agencies which a person with genuine complaint can approach for redress, with the assurance that he will be fully protected and that prompt and adequate action will be taken where found justified. The Central Vigilance Commission and the Vigilance Organisation should be able to meet this need in matters relating to complaints of corruption, harassment etc. We wish to emphasise that it is essential that bonafide complainants should be protected from harassment or victimisation. The Ministry of Home Affairs should consider itself as having a special responsibility in this regard.

(vi) Enquiry- cum- Reception Offices should be established in all Ministries/ Departments which deal with licences/ permits and to which members of the public frequently go. All visitors should enter their names and the purpose of their visit in a register to be kept at the Reception Office.

(vii) Steps should be taken to prevent sale of information. One of the causes of this type of corruption is the undue secrecy maintained in regard to matters in respect of which it is not necessary to do so. A clear distinction should be made as to what information should be treated as 'secret' and what should be made freely available to the public. Any member of the public who wants to have information of the latter category should be able to approach some specified officer in each Ministry/Department undertaking for that purpose and get what he wants.

14. We are told that on occasions difficulties are experienced in obtaining the necessary forms required to be submitted for obtaining licences/permits etc. This difficulty is likely to arise more in matters like applications for Taccavi, Cement and Steel etc. Except in regard to the Union Territories such difficulties are not likely to arise in connection with matters dealt with by the Central Government. It is desirable to remove such difficulties to whatever extent possible they may exist. We, therefore, recommend that arrangements should be made for easy supply of forms whether free or on payment.

15. At present, there is a column in the annual confidential report regarding every public servant where the superior officer has to comment on this integrity. But under the present practice it is difficult for him to fill this column even when he was reasonable grounds to be doubtful of the integrity of his subordinate in the absence of definite proof. So it is usual to say something non-committal. We recommend that in cases where the reporting officer is not in a position to make a positive report about integrity he should leave the column blank and submit a secret report if he has reasons to doubt the integrity of the officer on whom he is reporting stating the reasons for his suspicions. The Government of the heads of Department who receive such secret reports should take suitable steps to find out the correctness or otherwise of the report.

16. After very careful consideration we gave a report on 20.12.63 on the question of Government servants accepting commercial employment after retirement. Our report is in Annexure V. We have recommended that there should be a complete ban against Government for two years after retirement. We considered that such a strict restriction was necessary to dispel any impression that there is any sort of link or partnership or community of interest or collusion

between the higher echelons of administration and the private corporate sector as such an impression, whether justified or not, not only affects the prestige of the Civil Service but also affects the social climate.

17. The adoption of preventive measures against those who habitually corrupt public servants will strike at the evil from the other end. We wholeheartedly endorse the view that the existence of large amounts of unaccounted black money is a major source of corruption. This money is obtained by various ways, viz. tax evasion, smuggling, speculation in immovable property and shares and stocks, receiving fees and remuneration partly or wholly in cash without showing them in the accounts, trading in licences and permits, over-invoicing and under-invoicing etc. It has not been possible for us to examine these matters in any great detail. But we venture to make a few suggestions.

18. We consider that there is no justification to treat income-tax reports and assessments as secret. We notice that the secrecy provisions have been somewhat liberalised in the Income-tax Act, 1961, but not far enough. In some other advanced countries income tax returns and assessments are not treated as secret and are published. We consider publication of such returns and assessment would have a salutary effect on those persons in business and professions who are inclined to take advantage of the secrecy provisions to evade income-tax. They are sensitive about their reputation and the amount of income-tax paid is an index of their standing in their business or profession, they would be strongly dissuaded from lowering themselves in the estimation of their colleagues or given a handle to their competitors, if they are found to be assessed to tax on an income less than what they are believed to be earning. We are glad to note that some provisions in this respect are being made in the Finance Bill, 1984.

19. To buy and sell properties at prices much greater than those recorded in the conveyance deeds has become a common method of cheating the Central Government of Income - Tax and other taxes and the State Government of the stamp duty and as a convenient method of transferring black money. If, in some manner, the Central and State Governments, or some special corporations set up for the purpose can be empowered to step in and acquire such properties at the stated value, or even at a small premium when it is considered that the properties have been deliberately under-valued, it will strike a blow against black money.

Similarly, the habit of charging "pugri" or "premium" for renting houses and flats is a similar source of corruption for which some drastic steps have to be taken. We understand that this illegal "pugri" is taken not only by the owners of houses and flats, but also by the tenants who continue to hold on to them nominally and sublet to others.

20. We have already mentioned the existence of 'contactmen' and 'touts'. Obviously these do not include genuine representatives of commercial and industrial firms. In this regard our recommendations are:-

- (i) No official should have any dealings with a person claiming to act on behalf of a business or industrial house or an individual, unless he is properly accredited, and is approved by the Department, etc. concerned. Such a procedure will keep out persons with unsavoury antecedents or reputation. There should, of course, be no restriction on the proprietor or manager, etc., of the firm or the applicant himself approaching the authorities.

- (ii) Even the accredited representatives should not be allowed to see officers below a specified level- the level being specified in each organisation after taking into consideration the functions of the organisation after taking into consideration the functions of the organisation, the volume and nature of the work to be attended to, and the structure of the organisation. However, care should be taken to limit permissible contacts to levels at which the chances of corruption are considered to be small. This would often mean that no contact would be permitted at the level of subordinate officers.
- (iii) There should be a system of keeping some sort of a record of all interviews granted to accredited representatives.
- (iv) There should be a fairly senior officer designated in each Department to which an applicant etc., may go if his case is being unreasonably delayed.

It is necessary that a proper procedure should be devised in consultation with the Central Vigilance Commission for accrediting and approval by the Department. Before granting approval the antecedents of the person proposed to be accredited should, if possible, be verified. In any case no person who is not definitely employed by an established undertaking who will be responsible for his contact and actions should be approved.

21. It is also desirable that officers belonging to prescribed categories who have to deal with these representatives should maintain a regular diary of all interviews and discussions with the registered representatives whether it takes place in the office or at home. The general practice should be that such interviews should be in the office and if it takes place at home, reasons should be recorded. Any business or discussion which is not so recorded should be deemed to be irregular conduct, of which serious notice should

22. Companies and businessman should be obliged to keep detailed accounts of the expenditure in their expense account. Normally it should be the income-tax officers who should scrutinise those accounts. But whenever an income - tax Officer feels that amounts have been spent for entertaining high officials, or other purpose for which satisfactory explanation is not forthcoming, it should be his duty to refer the matter to the Chief Vigilance Officers in the department concerned. If there is any legal difficulty for passing on such information under the present law, it should be removed. It is through the close cooperation of the Income-tax Department, Vigilance Officers and Central Bureau of Investigation that effective results can be obtained. Public knowledge of the existence of such cooperation will be a good preventive measure.

23. Intelligent and effective propaganda can play a great part in fight against corruption. Such propaganda should on the one hand avoid giving an exaggerated idea that a particular case is more general than it is, and on the other it should convince the public that the authorities have no sympathy with the corrupt officials and are determined to put them down. It will be desirable to create a special cell in the Home Ministry consisting of representatives from All Indian Radio, Press Information Bureau, and the Films Division to evolve effective propaganda and publicity measures. Representatives of the press may also be associated. The general principles to be followed are:-

There should be no publicity at the time of investigation or during departmental inquiry, but effective and widespread publicity to cases resulting in dismissal, removal or compulsory retirement should be given. In cases of prosecutions before courts, important cases will be in the ordinary course be given

Publicity by the press. What is required is to ensure that true facts and arguments are available to those who edit the cases. The Cell proposed should offer to provide the necessary assistance. A periodical summary, say once in three months, of important cases dealt with either by departmental inquiries or prosecutions in courts should be supplied to the press. It may also be hoped that the report of the Vigilance Commission which will be placed before Parliament will attract wide publicity.

24. The most important preventive measure is of course the evolution of a social climate in which no public servant or a person holding a public office, unless he is wholly devoid of moral sense, will be tempted to stray from the path of integrity and resort to corruption. This is one of the terms of our reference and is being dealt with in a separate section.

.....

Source: Report of the Committee on Prevention of Corruption,
Govt. of India, Ministry of Home Affairs, pp-42-52

GIST OF IMPORTANT CIRCULARS ISSUED BY THE
COMMISSION/DEPTT. OF PERSONNEL & A.R.

(1) CV's Circular No. IK VGL 1 dated 22.1.1981.

The Commission have asked all the Chief Vigilance Officers of the Ministries/ Departments/Undertakings to furnish a quarterly return relating to major civil works (estimated cost more than fifteen lakhs each) in respect of their Organisation, to enable the officers of the CTE's Organisation to select and examine these works from the Vigilance point of view. The C.V.Os have also been simultaneously asked to supply a list of 10% of such major works which, in their opinion, a need to be inspected by the CTE from the Vigilance point of view.

(2) Commission's Circular No. 70 PRV 1 (A) dated 14.8.1981

The Commission vide their letter No. 4/8/76-R dated 10.6.1976 had brought to the notice of all CVOs of the Ministries Departments the steps which the Vigilance Machinery are required to take for detecting officers who had acquired assets disproportionate to their known source of income. This was done to maintain integrity in Administration. The Commission had then suggested that to begin with, the survey may be limited to Govt. servants who had acquired house properties etc. and those who are in possession of cars in spite of the officers and prepare a select list of officers for further probe. The aforesaid statements were required to include information regarding the source of acquisition, composition of the officer's family, number of dependent children, educational institutions where they were studying and the additional sources of income, if any. The aforesaid factors were considered helpful in forming some idea about the likely savings and whether the acquisition of various properties was reasonably possible from the public servant's declared and known sources of income.

In order to ascertain whether the cost of construction of property had been declared correctly by the Govt. servant, a comparative chart with the average cost of construction, calculated by the CBI (for Delhi), was provided simultaneously.

The said instructions have now been repeated in August, 1981.

(3) Commission's Circular No. 901 CVO 55 dated 13.10.1981

The Commission have recently reiterated that an instance has come to its notice where regular C.V.O. in the Public Undertaking has been appointed without prior approval of the Commission. This is contrary to the existing instruction which have been reiterated in DPAR's OM No. 122/2/2/81-AVD. dated 15.10.1981. The Ministries etc. may send their proposals for appointment of C.V.O.s on a regular basis in terms of the existing instructions and take further action for making the appointment only after receipt of the Commission's approval

(4) Commission's Circular No. OK VGL 17 dated 3.11.1981

It has recently been reiterated by the Commission that comments of the Ministries/Departments/ Public Undertakings/ Nationalised Banks on investigation reports be sent within one month of the receipt of the investigation report, failing which the Commission would presume that the Departments concerned have no comments to offer. Unless there is a specific request for extension of time-limit for submission of the Department's comments, the Commission will process the investigation reports after the stipulated period of one month.

- (5) Department of Personnel's O.M. No. 323/11/9/70-AVD.II
dated 18.1.1971.

In order to minimise the scope of corruption, it is imperative to study and analyse the results of disciplinary proceedings conducted departmentally and also cases decided in Courts (as forwarded by C.B.I.) so that loopholes in rules/procedures which provide scope for corruption etc. could be identified and effective steps taken to prevent the lapses found.

- (6) Department of Personnel's O.M. No. 11012/10/76-Estt. (A)
dated 6.10.1976.

The Govt. have reproduced the observations of the Supreme Court in the case of Ghanshyam Das Srivastava Vs. State of Madhya Pradesh (AIR 1973 SC 1183). The Court ruled on the question of an ex-parte inquiry against a Govt. servant under suspension who was not being paid his subsistence allowance regularly. As a result, the delinquent official could not be present during inquiry, on the ground of financial stringency. The inquiry was, therefore, held ex-parte. In the said case, it was held that it would be a violation of Article 311 (2) of the Constitution if the disciplinary authority proceeds with at the inquiry ex-parte if the Government servant had specifically pleaded his inability to attend the inquiry on account of financial difficulties caused by the non-payment of his subsistence allowance.

- (7) Department of Personnel's Circular No. 35014/1/77-Estt (A)
dated the 24th August, 1977.

The Government have regulated the right of a retired Govt. Servant to appear as a defence assistant of a charged public servant. Under Rule 14 (8) of the C.D.S. (C.C.A.) Rules 1965, a Govt. servant involved in a disciplinary proceedings may take the assistance of any other Govt. servant to present the case on his behalf. The Govt. have however, lay down that a charged official may also take the assistance of a retired Govt. servant subject the following conditions:

- a) The retired Govt. servant should have retired from service under the Central Govt.
 - b) He should not take up more than 3 cases at a time (modified from '2' to '3' by DOP's O.M. dated 3.6.78).
 - c) He cannot assist a Govt. servant after the expiry of three years from the date of his retirement.
 - d) Restrictions as envisaged in Rule 14 (8) of the aforesaid rule would apply if the retired Govt. servant is also a legal practitioner.
- (8) Department of Personnel's letter No. 11012/11/77-Estt. dated 28.7.1978.

If a charge-sheet under Rule 14 of the C.C.S. (C.C.A.) Rules cannot be served on the delinquent official either because he is not traceable (at his given address) or is deliberately avoiding the charge-sheet, the ministry/department concerned are then free to take recourse to rule 19 (ii) ibid on the ground that it is not reasonably practicable to hold the inquiry. There is no need to issue another charge-sheet. Action under Rule 19(ii) therefore, is a sequel to the charge-sheet issued under Rule 14.

2. The disciplinary authority should, however, record the reasons, in detail, for taking recourse to Rule 19(ibid).

- (9) Department of Personnel's Circular No. 11012/2/79-Estt.(A) dated 12.3.1981.

The Govt. of India considered the question whether the competent disciplinary authority could drop the charge (s) after the submission of the written statement of defence by the charged officer and without going through the course of an oral inquiry.

It was clarified by the Department of Personnel that disciplinary authority has the inherent power to review, modify or drop the article of charges against the charged Govt. servant, under Rule 14(5) of the C.C.S. (C.C.A) Rules, after the receipt and examination of his written statement of defence under Rules 14(4). It is not incumbent upon the disciplinary authority to appoint an Inquiry Officer for inquiring into the charges which are not admitted, if the Disciplinary Authority is satisfied that there is no further cause to proceed with.

2. This power is, however, subject to:-

- a) Consultation with the CBI in those cases which have been investigated by them. This reasons for dropping the charges should also be intimated to the C.B.I.
- b) The Central Vigilance Commission will be consulted where the disciplinary proceedings were initiated on the advice of the Commission.

(1) Department of Personnel's O.M. No. 134/1/81-AVD.I dated 13.7.1981.

The Department of personnel have reiterated the Supreme Courts ruling in the case of Mahabir Prasad Vs. State of U.P. (AIR 1970 SC 1302). The Court ruled that recording of reasons in support of a decision taken by a quasi-judicial authority in an inquiry is obligatory. This ensures that the decision is reached according to law and is not a result of arbitrariness or expediency. The necessity also arises as the order is subject to appeal/review. It is, therefore, necessary that all disciplinary authorities issue the orders as a self contained, speaking and reasoned order, conforming to the aforesaid legal requirement.

A quasi-judicial authority should issue the speaking order itself. Quasi-judicial powers cannot be delegated. Hence, such a decision by a subordinate/delegate is bad in law. Of course, if the President is the competent authority, he can always authorise an officer to authenticate the decision on his behalf.

(1) Department of Personnel's Circular No. 129/20/81-AVD.I dated 28.9.1981.

In pursuance of the observations made by the Prime Minister to the effect that no Vigilance case should be allowed to linger beyond one year, the matter was examined by the Department of Personnel, Govt. of India in consultation with the Central Vigilance Commission and the C.B.I. Department of Personnel have impressed upon all concerned that it should not be difficult to finalise all Vigilance cases within one year, not with standing that consultation is requires with the C.V.C./UPSC before imposing any penalty. The Departments have been directed to take corrective measures so that disciplinary proceedings are finalised within the aforesaid time-limit. A detailed review of all pending disciplinary cases is to be made by each Department, and appropriate measures to be taken wherever necessary. The cases which are pending for over a year are to be examined by the CVO of the Department concerned and specific directions of the secretary of the Department are to be obtained for their expeditious disposal.

In order to ascertain the progress of the actions taken by each Department, the DOP have prescribed half-yearly statements, indicating the reasons for delay and the steps taken towards early disposal of cases. The Commission (Vide their letter No. 5K CRD 22 dated 2.11.1981) have also requested for the aforesaid half-yearly statements.

(12) Department of Personnel's O.M. No. 122/2/81-AVD.I
dated 15.10.1981.

The Department of Personnel while drawing attention of the all Ministries/Depts. etc. to the instructions as contained in MHA's resolution No. 24/7/64-AVD dated 11.2.1964 and other letters issued by the Commission from time to time, regarding appointment of CVOs, again brought to the notice of all concerned that before finalising the appointment of CVOs, the prior approval of CVC should invariably be obtained. In cases requiring approval of the Appointments Committee, the proposal to the Establishment Officer should clearly intimate whether approval of C.V.C. has been obtained.



COMPLAINTS AND THEIR DISPOSAL

- M.K. DIXIT

I. MEANING AND COGNIZANCE OF COMPLAINTS

Restricted Sense- Communications reporting grievances or malpractices- Oral complaints reduced to writing.

Wider Sense of "complaints"- Compare meaning of "receipt" in official parlance - complaints to cover reports, returns, audit paras, inspection notes, press cuttings, verbal information, information gathered by Vigilance officer etc.

Oral Complaints - Establish and identify and verify antecedents of the complainant before taking action.

Complaints by public servants- Director (otherwise-than-through-proper- channel) complaints, could be entertained- only if on corruption.

II. THE BASIC CLASSIFICATION OF COMPLAINTS

- i) Whether subject matter within executive power of the Central Government organisation concerned.
- ii) Whether vigilance or non-vigilance-
Element of corruption or improper motive;
Normally CVO to decide on Vigilance angle. If the has doubt, head of the organisation to decide.
Complaints referred by CVC for investigation and report to be deemed to be prima facie vigilance cases.
- iii) Anonymous/pseudeonymous complaints- Government's general policy not to act on these-
Reasons: Good many of these found false/malicious; if acted upon-
adverse effect on morale-
In actual practice notice of serious and specific allegation can be taken-

CVC would refer such cases on selective basis as source information and obtain reports from administrative authorities.

III. REGISTER/RETURN ON VIGILANCE COMPLAINTS-

- a) Register I- to be maintained by CVOs in two parts (One for Category A employees and one for Category B). Anonymous /pseudonymous complaints not to be registered as such.
- b) Register complaints normally in concerned administrative organisation only.
- c) Quarterly Statement I on complaints- Quarters ending March, June, Sept. and December- No. of receipts source-wise, no. of disposals, arrears.
- d) Quarterly Statement No. 4- Inspections and their outcome in the form of complaints registered. Also other vigilance activity (Training etc.), In two parts: (i) Branches of Head Office (ii) Subordinate formations. Periodicity- as for Statement I.

Importance of Registration and Quarterly returns as above- from point of view of vigilance activity in general and preventive vigilance in particular. Feed-back to CVC about handling of complaints especially in regard to category 'B' Public servants.

IV. ACKNOWLEDGEMENT-

If source identifiable- may be acknowledged. In CVC: Acknowledgements issued invariably. Complaints from MPs: acknowledged by Secretary. Others: By S.O. (i)

(1) CVC's instructions under 79 CRD 16, dated 28.11.1981.

V. KEEPING HEADS OF ORGANISATION INFORMED

Patticularly when complaints implicate senior public servants.

In CVC; CVC/Secretary kept informed (2)

VI. SCRUTINY

Examine whether specific verifiable facts mentioned. If not, no further investigation necessary: close case. If yes, preliminary investigation to be made.

A. INVESTIGATION THROUGH CBI

Decide upon CBI's nomination at the earliest possible stage. cases needing scrutiny by police as expert and legally competent investigating agency- scrutiny of private/non-Govt. records- Inter rogation or search or number of officials, private persons and search of premises: e.g. forgery, falsification of records possession of disproportionate assets, bribery and other crimes.

CVCs competent to refer cases direct to CBI.

CBI need not consult administrative head before registering a case (PE/RE/FTR). But should take him in confidence at the earliest.

Normally no review of cases under investigation- If reviewed/ discussed, CBI to be invariably associated. Parallel investigation to be avoided.

Public announced on entrusting the case to CBI to be made after consulting of Department of personnel & A.R. & C.B.I.

Investigation to be completed within six months. If delayed, report to CVC with reasons etc.

Full cooperation to be given to CBI by administrative officers- Inspection of records- Give original documents. Make records/information available within 15 days (Maximum a month)- Top secret documents to be handed over to the gazetted SPE officers

2. Secretary's instructions dated 12.9.1983.

only- other classified documents to be given to a gazetted officer or other officer specially authorised by Supdt. of Police- if photostate copies are given, give certificates: 'Originals in safe custody and out of reach of suspect officer'.

B. PRELIMINARY INVESTIGATION WITHIN DEPARTMENT/ORGANISATION

The chief Vigilance Officer or any other suitable officer nominated to conduct preliminary inquiry. Important steps to be taken:

- a) Study the basic facts of the case and list out all relevant documents and officers who dealt with the transaction in question.
- b) All records listed should be taken in custody or sealed.
- c) Study relevant departmental rules, relevant parts of manuals, guidelines, instructions etc., consulting wherever necessary the senior officers administering those rules etc. for the proper appreciation of the case.
- d) Interview persons involved and record their statements- Statements to be signed- Suspected officer's version also to be obtained- Inspection of documents by the suspected officer not essential at this stage. (I)
- e) Site inspection- to be done with utmost promptness wherever necessary (a.g. civil construction work)- correct recording of spot evidence to be ensured before situation is disturbed.

(1) CVC's letter No. 58 VGL 13, dated 15.6.1978.

f) Transfers/ Suspensions of officers to ensure smooth and complete investigation.

g) Assistance of Technical Experts/ Organisations

1. Government Examiner of Questioned Documents (Good)

Authorship of documents/writings/ forgeries/ alterations / erasures determine substitution of documents, to determine sequence of writing to decipher secret writings; to fix date of the documents.

ii. Chief Technical Examiner's organisation under CVC (for civil engineering works).

iii. A number of other organisations concerned with number of other organisations concerned with specific disciplines such as these listed at pp. 46.47 of Vigilance Manual, Vol. I.

h. Drafting of the investigation Report-

To be a self-contained document with the following main contents:

i. Introductory para giving very brief outline

ii. Full narration of facts and allegations with documentary and oral evidence available in support of allegations.

iii. Defence version with the supporting documentary and other evidence.

iv. Investigating officers' own assessment of the evidence for and against.

v. Prima facie finding as to what allegations substantiated/non-substantiated and the extent and nature of prima facie delinquency of each suspected public servant. Also specify rules/procedure/convention etc. violated.

VI. Appendices wherever necessary to cover lengthy lists of documents, witnesses, draft charge-sheets etc.

C. Investigation by local police-

D. Investigation by CVC.

Only in cases of complaints received in CVC.

Status of Investigation Report

Investigation report- a confidential document essential for the exclusive use and guidance of the disciplinary authority- Not to be produced or cited in any regular inquiry at judicial proceedings. Privilege can be claimed under section 128 or 124 of the Evidence Act.

ACTION AFTER INVESTIGATION REPORT

Disciplinary authority to study investigation report - points of particular examination- if all evidence considered- if all concerned questioned and involved- if technical points and procedural aspects special to the organisation well appreciated- if discretion properly exercised by suspected officer (s)- extenuating circumstances- post work and conduct of suspected officer (s). Disciplinary authority to decide upon further course of action. Consult CVC wherever essential. Investigation stage over at this point.

SPEED OF DISPOSALS

Various time-limits to be kept in view. Particular attention to be paid to:

- I. Date of superannuation of suspected officer
- ii. Duration of suspension period, if any
- iii. Other bio-data of officer- next increment/ confirmation/ promotion.

AVOIDABLE COMPLAINTS

III- informed complaints- make all non-classified relevant information easily available- Out-of-way decisions arouse suspicion keep your decision fully recorded with reasons: Keep your cards open.

FALSE/MALICIOUS/VEXATIOUS COMPLAINTS

Suitable action (Departmental penal proceedings of criminal prosecution in court) to be taken against complainants- Action under section 182 of IPC- Action under section 195 (i) (a) where false complaints are made).

REGISTERS/RETURNS ON INVESTIGATIONS

Register II to be maintained in two parts, the for category A officers and another for Category B. Date of commencement of investigation, investigating authority, date of reference to CVC, time taken for investigation and further action on investigation report to be indicated.

Corresponding quarterly returns in State 2-A (for Category A officers) and Statement 2-B (for Category B officers) to be submitted. Number of investigation cases brought forward, received, number of reports finalised during the quarter and pending cases carried forward etc. to be indicated. periodicity, quarters ending March, June, September and December.

CERTAIN ESTABLISHMENT MATTERS

SUSPENSION

- a) Relevant service/disciplinary rules to be followed
- b) At any suitable stage in disciplinary proceedings.
- c) Public interest: guiding principles, e.g. prejudice to proceedings apprehended need to demonstrate Government policy to deal strictly in matter of public importance security of state involved.
- d) Periodical review of need for continuation of suspension.

PROMOTION

Govt's general policy- to obtain vigilance clearance- this to be given except where suspected public servant is not suspended and decision to start regular departmental proceedings taken by competent authority. Mere launching of primary preliminary investigation is no bar to vigilance clearance. In case of suspension- "sealed envelope" proceedings to be followed.

CONFIRMATION

To be withheld even during investigation stage.

RESIGNATION

- a) should not normally be accepted-
- b) Accept if in public interest:
 - i. no moral turpitude
 - ii. removal/dismissal unlikely
 - iii. Unnecessary expensive protracted proceedings expected.

VOLUNTARY RETIREMENT

Under rule 4B-A of CCS (Pension) Rules, 1972, Appointing Authority Competent to refuse permission for Voluntary retirement. Criteria to be applied for considering proposals: same as for resignation.

Disciplinary action continue even after voluntary retirement.

IMPORTANT CASE LAW

ON

" WHAT IS MISCONDUCT "

- (A) (a) There cannot be an exhaustive list of actions which would be unbecoming of a Government servant. (Calcutta High Court in Assistant Commissioner of Income-tax Vs. S.K. Gupta SLR/ 1976 (1)-pp. 143-50).
- (b) In the very nature of things, conduct rules cannot be exhaustive of every conceivable kind of misconduct that may be committed by a civil servant. For, ultimately what would be regarded as misconduct would have to be decided by the Government keeping in view the nature of the master and servant relationship between the two. (Delhi High Court- ~~ARR. Deshpande~~ Vs. Union of India and another SLR 1971-Vol. (2)-pp 776-784)
- (c) Lack of efficiency, & failure to attain the highest standard of administrative ability while holding high post would not by themselves constitute misconduct. There have to be specific acts of commission/commission.
(S.C. in Union of India Vs. J. Ahmed SLR May 1979-pp. 840-851)

(B) GRAVITY OF MISCONDUCT

There can be no precise scale of graduation in order to arithmetically compare the gravity of one misconduct from the other. The reasons which induce the punishing authority are not justiciable; nor is the penalty open to review by the Court.

(Punjab & Haryana High Court in Bhagwat pershad Vs. I.C. of Police- AIR 1970 pp. 81-85).

(C) SOME ILLUSTRATIVE EXAMPLES OF MISCONDUCT

- (a) (Rajasthan High Court in Bhagwat Swarup Vs. State of Rajasthan- SLR-pp. 835-844)
- (b) (Rajasthan H.C. in Prof. R. Bhadada Vs University of Jodhpur SLR 1977-pp. 737-746)
- (c) (Bombay High Court in Secretary, Bishop Control School Manag'ing Committee, Nagpur, Vs. S.N. Yakub, Deputy Director of Education, Vidarbha, SLR 1976-pp. 457-471)

(D) MISCONDUCT NOT RELATING TO OFFICIAL DUTIES

- (a) Misconduct committed while exercising statutory powers of judicial/quasi-judicial nature is punishable (Supreme Court in Govinda Menon Vs. Union of India- AIR 1967 pp. 1204-1223)
- (b) Excluding misconduct in private life from the purview of disciplinary proceedings might clothe the Govt. servants with an immunity which will place the Govt. in a position worse than that of the ordinary employer.

(Keral High Court in Natarajan Vs. Divisional Superintendent, southern Railway SLR 1976-pp. 669-678)

(E) PAST MISCONDUCT

Action can be taken for past misconduct

(Supreme Court in Dr. Bool Chand Vs. Chancellor, Kurukshetra University AIR 1963 pp. 298-300)

(A) (a) Inspecting
Assistant
Commissioner
of Income Tax
and others
Vs.
Sarendra Kumar
Gupta.

Shri K.S. Gupta had been charged with insubordination, rowdiness and obstructing public servants, and the Inquiry Officer had found him guilty. The findings were challenged inter-alia on the ground that the petitioner had not committed misconduct because there was no violation of any of the rules 4 to 22 and that rule 3 (1) (iii) of the CCS rules was vague and indefinite. The petitioner obtained a favourable verdict from the Calcutta High Court but the Divisional Bench of the same court upheld the State's appeal observing-
"It is to be appreciated that there cannot be an exhaustive list of actions which would be unbecoming of the government servant. Apart from the prohibitions (contained in rules 4 to 22) each case will have to be decided on the attending circumstances in the context of norms of conduct expected of a Government servant by usually accepted standards of morality, decency,

decorum and propriety. The rules
ingly do not suffer from any vagueness
of indefiniteness, "..... However,
the act complained of has to be judged
on its own merit and on objective consi-
derations the Inquiry Officer has to
decide whether it was in violation
of the same sub-rules.

(b) A.R.R.
Deshpande
Vs.
Union of
India &
Nother.

The petitioner was charged with
acquisition of disproportionate assets
and the High Court while discussing the
question as to what would justify an
inquiry against a Civil servant, observed.

" The Government servants' conduct
rules purport to describe the various
kinds of mis-conduct which a civil
servant may commit and for which depart-
mental proceedings may be launched
against him. But in the very nature of
things, these conduct rules cannot be
exhaustive of every conceivable kind of
misconduct that may be committed by a
civil servant. For, ultimately what
would be regarded as misconduct would
have to be decided by the Government
keeping in view the nature of the
master-and-servant relationship
between the two. Whatever conduct of
the civil servant is regarded as being

Contrary to an ideal master servant relation ship between the two may be regarded as a lapse on the part of the civil servant and may be considered to be a misconduct in varying degrees."

(c) Union of
India,
Vs.

Shri J.
Ahmed.

The respondent was a Deputy Commissario and there were riots in his District. He was charged with inefficiency, lacking the quality of leadership, ineptitude, lack of foresight, lack of firmness and indecisiveness. The Supreme Court observed as follows:- "If rule 3 were the only rule in the conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But rules 4 to 18 of the Conduct Rules prescribed code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive, it would not be prudent to say that only (that) act or omission would constitute misconduct for the purpose of Discipline and Appeal rules which is contrary to various provisions in the Conduct Rules. The intentions in the Conduct Rules clearly

Provide that an act or omission (contrary there to so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission, may as well constitute misconduct.

Allegations in the various charges do not specify only act or omission in derogation of or contrary to conduct rules save the general rule 3 prescribing devotion to duty. It is, however difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

(B) Bhagwat Parshad
Vs.
I.G. of Police

The petitioner, a police constable, was found drunk when he was off duty and was dismissed from service as a result of disciplinary proceedings. The punishment was challenged as being too severe and disproportionate to the misconduct on the ground that it was a solitary instance of the petitioner's having taken intoxicating drinks. The petition was dismissed with the following observations:

"Misconduct is a generic term and means to conduct amiss, to mis-manage; wrong or improper conduct; bad behaviour; unlawful behaviour or conduct. It includes malfeasance, misdemeanour, delinquency and offence. The term misconduct does not necessarily imply corruption or criminal intent... human conduct or behaviour cannot be graded and there can be no precise scale of graduation in order to arithmetically compare the gravity of one from the other."

The High Court went on to observe: "As observed by the Supreme court in State of Orissa Vs Vidya Bhushan, AIR 1963 SC 77(786) the court, in a case in which an order to dismissal of a

Public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induced the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the court."

(C) (a) Bhagwat
Swarup
Vs
State of
Rajasthan

The petitioner while posted as Magistrate First Class had issued search warrants on the basis of a complaint that the complainant's wife had been taken away by her father and was being kept in illegal confinement. While issuing the search warrant, the petitioner had directed the police to recover and produce the lady in his court on July 13, 1968. The Police, however, produced her on July 8, 1967 which was a holiday and the petitioner passed orders on that very day setting her free. He was charged with having acted in undue haste without exercising due care and caution and a penalty of stoppage of one increment was imposed. The order was challenged on the ground, inter alia, that the petitioner had only exercised his judicial discretion under the law and should not be penalised even if the exercise of this discretion was found to be defective

in some respects. The petitioner was dismissed on the ground that the misconduct of the petitioner was glaring and apparent even on the admitted facts.

(b) Prof. R.
Bhadada

Vs.
University
of Jodhpur
and another.

This petition was filed against the order of suspension and was dismissed with the following observations by the Rajasthan High Court:-

"the first limb of this argument (of the petitioner) is that the charges which have been framed against the petitioner do not amount to gross-misconduct and negligence of duties and therefore the inquiry cannot proceed against the petitioner. A reference to the charges framed against the petitioner will show that it has been alleged that he refused to give marks to certain persons for sessional work which were due, that he forced certain students to do a topic so that he could utilise it for his own Ph.D. degree and that his obstructive tactics also prevented the teacher candidates of the Mining Engineering Department from obtaining their M.E. degree. It is also alleged that he made a false excuse for cancelling the survey camp of B.E. (Final Mining Class). I am not concerned here with the veracity or otherwise of the charges. All that

I am saying is that the charges, as alleged do prima- facie show a gross misconduct or negligence in duty (subject of course of their being proved). If a Professor does not perform his duty in giving guidance to the other teachers, and the students under him certainly it cannot be treated lightly."

(a) Secretary,
Bishop Cottol
School Managing
Committee Nagpur

Vs.

S.N. Yakub, Deputy,
Director of
Education
Vidarbha.

The petitionerschool had removed one of its teachers from service on the charge that he was associating himself with and actively supervising and managing other schools. The respondent, Deputy Director of Education, who was the appellate authority had interfered with this order and the petitioner school had challenged the same before the High Court. The petition was contested on the ground that the concerned teacher had not violated any of the specific rules and regulations and had thus committed no misconduct. This contention was rejected with the following observations:-

" As observed by Lord EASHER MR IN FEARCE Vs FASTER, what circumstances will put a servant into the position of not being able to perform, in due manner, his duties or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. However, from the relationship of Master and Servant, a liability directly

flows from the contract of employment itself that the employee had impliedly agreed that he will not do anything which might injure or undermine the trade, business or activity of his master. This is an implied condition of fidelity which means that the employee will perform his duty faithfully."

(D) (a) Govinda
Menon
Vs.
Union of
India

The petitioner while functioning as the first Member of the Board of Revenue was hooding the post of commissioner of Hindu Religious and Charitable Endowments. He was charged with recklessly sanctioning leases of extensive forest lands with valuable tree growth belonging to various Devaswams under his charge to his relations, neighbours and friends in violation of prescribed norms. He had taken the plea that his impugned actions were taken in his capacity as the commissioner of Hindu Religious and Charitable Endowments which under the relevant Act, was a Corporation sole having perpetual succession and own seal and liable to and that the Government had, therefore, no authority to challenge his actions. The petition was dismissed with the following observations:-

" It is manifest, therefore, that through the propriety and legality of the sanction to the leases may be questioned in appeal or revision under the Act. Government is not precluded from taking disciplinary action

if there is proof that the Commissioner had acted in gross racklessness in the discharge of his duties or that he failed to act honestly in good faith or that he omitted to observe the prescribed conditions which are essential for the exercise of statutory power. We see ~~no~~ reason why the Government cannot do so for the purpose of showing that the Commissioner acted in utter disregard of the conditions prescribed for the exercise of his power or that he was guilty of misconduct or gross negligence."

(b) Natrajan The petitioner while functioning as
Vs. Assistant Station master, Combators, was
Divisional charged with having misused his position as
Superinten- secretary-cum- Treasurer of the Southern Rail-
dent, way Employees Consumer Cooperative Stores for
Southern personal gain and was removed from service.
Railway. he had challenged the order of removal on
 the ground that the misconduct did not
 relate to his functioning in an official
 capacity and as such he had committed no
 official misconduct. The contention was
 rejected with the following observations:-

"The result of such a contention being accepted would be that however reprehensible or abominable a Government servant's conduct in his private life may be the Government will be powerless to dispense with his services unless and until he commits criminal offence or commits the act which is specifically prohibited by the conduct rules."

it might clothe the Government servants with an immunity which will place the Government in a position worse than that of the ordinary employer".

- (E) Dr. Bool Chand Vs. Chancellor, Kurukshetra University.
- The appellatant had been compulsorily retired from the Indian Administrative service by way of punishment on Feb. 28, 1963. In March 1965, he was appointed professor and Head of the Department of Political Science in the Punjab University. on June 18, 1965, he was appointed vice, Chancellor of the Kurukshetra University by the Chancellor. The chancellor handed over the charge and his successor terminated the services of the appellatant on the basis of the past misconduct. The Supreme Court refused to interfere on behalf of the appellatant. Normally a misconduct for this purpose should be such as has a rational connection with his function and renders him unfit and unsuitable to continue to service.

.....

RULE OF LAW

BY

H.R. KHANNA*

Ever since the beginning of civilisation, two conflicting viewpoints, rule of men or rule of law, have competed for acceptance. Although each school of thought has not lacked in its votaries, in the aggregate the thinking has been in favour of the rule of law. On occasions we have slipped back into government by will only to return again sadder and wiser to the rule of law when hard facts of human nature demonstrated the selfishness and egotism of men and the truth of the dictum, that power corrupts and absolute power corrupts absolutely. Rule of law is now the accepted norm in all civilised societies. Even if there have been deviations from the rule of law, such deviations have been covert and disguised, for no government in a civilised country is prepared to accept the ignominy of governing without the rule of law.

The content of rule of law varies from country to country, but everywhere it is identified with the liberty of the individual. It seeks to strike a balance between the opposing notions of individual liberty and public order. The question of reconciling individual rights with the requirements of public interest has always posed a vexed problem. Such reconciling and harmonising can be attained by adherence to the rule of law and by the existence of independent courts which can hold the balance between the citizen and the State and compel both to conform to law.

Respect for law and respect for government have a mutual relationship. Erosion of one necessarily has its effect on the other. Government under law means that the power to government shall be exercised only under conditions laid down in the constitution and the laws approved by the people or their representatives. Law thus emerges as a norm limiting the application of power by the government over the

* Formerly Judge, Supreme Court of India.

citizens or by citizens over their fellow citizens. Government under law seeks the establishment of an ordered community in which the individual aware of his rights and duties comprehends the area of activity within which as a responsible and intelligent person he may freely fashion a his life secure from interference from either the government or other citizens.

For true efflorescence of the rule of law we need a climate of democracy Rule of men, as distinguished from rule of law, has normally paved the way to authoritarianism and dictatorship. Experience tells us that unfettered power vested in individuals, however well intentioned they might initially be, has ultimately turned them into dictators and despots, unresponsive to the public opinion and scornful to the public feeling. There is, it may be stated, a direct nexus between democracy and the rule of law. It is also plain that without rule of law. It is also plain that without rule of law there can be no proper dispensation of justice. Inter-relationship between democracy and the proper administration of justice has accordingly come to stay. Man's love of justice makes democracy possible, but man's inclination to injustice makes democracy necessary. It is, therefore, no wonder that independence of courts has been found irksome by tin gods of dictatorship. Rule of law postulates recognition of civil rights and liberties. Such rights and liberties which are essential attributes of democratic societies, have always been frowned upon by dictatorships. It is indeed a truism to say that the strength of democratic institutions in a country can be measured by the extent of the prevalence of civil rights and liberties enforceable through the courts of law.

One vital index of the rule of law is that no one shall be deprived of his life or liberty without the authority of law. This indeed can be regarded as the touchstone of the rule of law. Recently we passed through a period of eclipse of certain basic values, values which we had cherished since the days of the struggle for independence, values which are a part of the common heritage of mankind in a civilised world. Amongst those values are the rule of law which necessarily postulates that no one shall be deprived of his life or liberty without the authority of law. Those values also include certain freedoms like freedom from fear as also the freedom of expression which comprises within itself the freedom to dissent and the freedom of the press. The eclipse of those values cast a shadow over our national life and we were all wondering as to when the lights would be a glow again. And in March this year we saw the upsurge of mass feeling against the erosion of the cherished values.

It has been said that despite its inconsistencies, its crudities, its delays and its weaknesses, law still embodies so much of the results of that disposition as we can collectively impose. Without it we cannot live; only with it can we insure the future which by right is ours. The best of man's hopes are enmeshed in its process; which it fails they must fail; the measure in which it can reconcile our passions, our wills, our conflicts, is the measure of our opportunity to find ourselves. Man may be a little lower than the angels, he has not yet shaken off the brute and the brute within is apt to break loose on occasions. To curb and control that brute and to prevent the degeneration of society into a state of tooth and claw, we need the rule of law. We also need the rule of law for punishing deviations and lapses from the code of conduct and standards of behaviour which the community speaking through its representatives has prescribed as the law of the land.

If there are three prime requisites for the rules of law, they are a strong Bar, an independent judiciary and an enlightened public opinion. There can, indeed, be no greater indication of the decay in the rule of law than a docile Bar, a subservient judiciary and a society with a choked or corasened conscience. Fearlessness became a part of our heritage since the days of the struggle for independence when Mahatma Gandhi carried on a reletless campaign to banish fear out of our hearts. Fear swarfts human personality, turns even heroes into men of clay and prevents efforescence of higher values of life. Fear likewise stifles the fear staks the land its attendants are servile sycophancy, rank opportuism and nauseating charlatanism and the casualities are the noble impulises of the mind. Where fear is justicecant be. Under the shadow of fear a court becomes an instrument of power, a so-called trial is a c punitive expedition, a ceremonial execution-its victims are a J Joan of Arc or A galileo.

And while talking of independence of courts, I must remove a misconception. Independence of court does not necessarily mean deciding a case against the State. Sometimes a notion prevails that the more a judge decides cases against the state, the more independent he is. This is a wholly misleading notion and the sooner it is dispelled the better it is for the health of the community. It is also wrong to believe that in every dispute between the citizen and the State, the state is in the wrong and the citizen in the right. Every government in a welfare state has to undertake a number of measures with a view to bring about socio-economic reforms. While taking those measures, the activity of the State must in the nature of things impinge upon the private rights of individuals. The modern approach is that the welfare of the community must have primacy over

the private rights of the individual. The individual whose rights are to impinged upon is bound to challenge the measures adopted by the government. If the courts in their zest to show independence, judging independence by the above test, were to strike down all measures of the government it would be stultifying and setting at naught all schemes to bring about socio-economic reforms. We, therefore, should not take a lopsided view of the independence of the judiciary. Independence means dispensation of justice without fear of favour. Independence postulates keeping the scales even in any legal combat between the rich and the poor, the might and the weak, the state and the citizen. As much injustice can be done by keeping the scale weighted in favour of citizen and against the state, as it can be by keeping the scales weighted in favour of the state and against the citizen. It is for that reason that we need persons on the Bench who can weight things in the balance with supreme impartiality, who are undaunted by any consideration except that of justice, justice absolute, justice pure and unallied, whom nothing can sway, neither mob frenzy nor the views of the powers that be, persons with resolute hearts, persons whose allegiance is to justice and to nothing else. Timidity of mind ill goes together with the office of a judge. Weak characters cannot be good judges.

Effront to the rule of law can take many forms. I have already referred to the period when words like sanctity of life and liberty sounded like a distant cry. Rule of law also suffers when prisoners and those under arrest are subjected to humiliation. If somebody be guilty of an offence, he should be sent up for trial and on conviction made to pay the penalty prescribed by law. But prisoners and those under arrest too are human beings and it certainly constitutes an onslaught on the rule of law to subject them to indignity and humiliation beyond what is inherent in

the very act of their arrest and prosecution or conviction. Any talk of human rights and civil liberties would bound hollow and meaningless if we countenance measures are violative of basic human dignity which is possessed by every person on account of his being human. Attempt to bring in personal likes and dislikes of individuals in the enforcement of laws is obnoxious to the rule of law.

Question then arises as to whether under the garb of rule of law are we not ushering in judicial oligarchy in place of executives supremacy. To put it in other words, if the executive supremacy results in elimination of fetters on executive fiat, does not rule of law result in vesting the courts with immense powers of uncontrolled nature. The question thus turns on the point as to whether judges are absolutely free to decide the matters that come up before them in any way or are there any limitations subject to which the will of the judges masquerading as judicial discretion can be exercised. The answer to this was given by Justice Cardozo when he said that the judge, even when he is free, is not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. Wide enough in all conscience is the field of discretion that remains.

To repeat what was said by me on an earlier occasion, judges are men, not disembodied spirits, they respond to human emotions. The great tides and currents which engulf the rest of mankind, in the words of Cardozo, do not turn aside in their course and pass the judges idly by. Yet notwithstanding the human factor, the courts operate in a setting that forces responsibility upon them. Judges are bound within walls, lanes, and limits that are often unseen by the layman - walls, lanes, and limits built from the heritage of the law; the impact of the cases as they have come down through the years, the regard for precedent, the self-imposed practice of judicial restraint, in brief, the tradition of the law. It is also an essential requisite for a judge to acquire a certain amount of detachment and discernment, so that he is not carried away by popular catchwords and shibboleths. We must always beware of the danger which underlies the disposition to take the immediate for the eternal, the transitory for the permanent and the ephemeral for the timeless. This necessarily calls for a determined resistance to the hypochondria of the thinking process. It also postulates a free trade in ideas. It has been the tradition of the press, the Bar and the enlightened sections of the community to make a vital and significant contribution in the carrying on of this trade. No one can underestimate the importance of this trade for the health and growth of the society. To put it in the words of a great master when men have realised that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. Catchwords of outlook

freedom of thought and a broad spirit of tolerance. In few other countries has there been such fusion of different schools of thought, religious beliefs and cultural streams.

So far as the judges of the higher courts are concerned, their office demands that they be historian and prophet rolled into one, for law is not only as the past has shaped it in judgments already rendered but as the future ought to shape it in cases yet to come. Law necessarily has to carry within it the impress of the past tradition, the capacity to respond to the needs of the present and enough resilience to cope with demands of the future. A code of law, especially in social fields, is not a document for fastidious dialectics; properly drafted and rightly implemented it can be the means of the ordering of the life of a people. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. In times like our own when deep changes are taking place in the convictions of man, it is not as the completed revelation that, in the words of Learned Hand, the living successors of the past law makers can most truly show their reverence for law or continue the tradition which they affect to regard. Only as an articulate organ of the half understood aspirations of living men. Constantly recasting and adapting existing forms, bringing to the highlight of expression the dumb impulses of the present, can they continue in the course of the ancestors whom they reverse.

Law, if it is to prove an effective instrument of social utility, must respond to and find an answer to the felt necessities of the time. It cannot seek refuge in a vacuum of abstractions. No amount of verbal praise and encomium for the rule of law by some votaries of law and intellectual theorists would win respect of the mass of people for the rule of law unless in its actual working the rule of law satisfies the quest for justice in concrete terms. The courts through whom the authority of law speaks and enforces itself must earn reverence through the test of truth. In the final analysis, the people are the judge of judges, and every trial is a trial of our judicial system. Delay in the disposal of cases is a standing stigma of our judicial system. Not only ordinary cases but even those who knock at the door of the courts to longer on in courts for years. This understandably creates disenchantment and causes anguish to all those who knock at the door of the courts to seek prompt relief. Justice delayed in a large number of cases is as good or bad as justice denied. Where is the justice is a young wife or husband seeks matrimonial relief and gets it after ten or fifteen years by which time the period of youth becomes a matter of the past. Of what avail is the acquittal of a person who has to spend years as an under-trial prisoner in jail. Instances like those can be multiplied and infinitum. All over the world today the trend is to have one right to appeal on question of fact and the right of second appeal only on substantial question of law. It is a mistake to suppose that provision for too many appeals leads to greater justice. There is no guarantee that if a decision is reversed in appeal, the decision of the court of appeal is incorrect. I have no doubt that if a right of appeal were provided from the judgement of the highest court of the land, a number of its decisions would be reversed in appeal. The Supreme Court, it has been said, is not final because it is infallible; it is infalible because if it final.

Thoughts of great men of law are now windfalls of inspiration. They are the product of years of contemplation and brooding. It was said of a great judge that the anguish which preceded his decisions was apparent, for again and again, like Jacob, he had to wrestle with the angel all through the night, and he wrote his opinions with his very blood. But when once his mind came to rest, he was as inflexible as he had been uncertain before.

Rule of law does not depend merely upon the courts and the law enforcement agencies. Rule of law needs a general climate of order and discipline. It postulate an attitude of mind according to which the bulk of population is inclined to obey the law and act in accordance with it irrespective of the fact whether the law enforcement agencies are on the watch. An atmosphere of indiscipline strikes at the very basis of the rule of law. Today we find forces of indiscipline raising their ugly head in universities and educational institutions. There is also industrial unrest with strikes and lock outs and consequent loss in industrial production. Indiscipline has likewise marred other fields of life. All these factors impinge upon the general law and order situation. It would be tragedy if an impression comes to prevail that without some repressive measures, we cannot ensure discipline in public life.

We must not also lose sight of the fact that all rights are conditioned upon the existence of duties. For every right there is a corresponding duty. A Nation wherein people are conscious only of their rights and not of their duties would soon find itself in a state of anarchy. Some nations have made express provisions for the duties of people in their constitutions. For example, Article 12 of the Japanese Constitution provides that the freedom and rights guaranteed to the people by this

constitution shall be maintained by the constant endeavour of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilising them for the public welfare. Likewise, according to Article 18 of the West German Constitution, whoever abuses freedom of teaching, freedom of assembly, freedom of association, the secrecy of mail, posts and telecommunications, ownership, or the right of asylum in order to combat the free democratic basic order, shall forfeit these basic rights. Even where there are no express provisions, it is an implicit assumption of every constitution that the liberties conferred upon the people shall not be abused. Those who love liberty, they must also ensure the maintenance of conditions which are vital for the preservation of liberty.

Now that a new government has come into power, I would repeat what was said long ago in British Parliament by Lord Brougham, because those words have an equal relevance today in our country. Said the noble Lord:

"It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be our sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence."

(Speech delivered in New Delhi on Sept.9, 1977)

JUDICIAL CONTROL OF ADMINISTRATIVE ACTION

By: M.P. Jain & S.N. Jain
Principles of Administrative Law

The discretion of the administration has to be controlled so that there may be "a government of laws and not of man". If complete freedom of action is given to the administration it would lead to the exercise of power in an arbitrary manner seriously threatening individual liberty. It is, therefore, necessary to control "discretion" in some measure to restrain it from turning into unrestricted absolutism. One of the important control mechanisms is through the courts.

The pattern of judicial review in the area reflects the reconciliation of two conflicting values; viz.,

(i) since the legislation has conferred power on the administrative authority and the courts have not been given power to hear appeals against its decisions, it shows that trust has been placed in the judgement of the authority instead of the courts.

(ii) Nevertheless, the authority must act within the bounds of law and power and the legislation cannot have intended that the executive be the final judge of the extent of its powers, the courts have to come into the picture and keep the administration within the confines of the law.

The court is not an appellate authority where the correctness of the order of the government can be canvassed. It has no jurisdiction to substitute its own view as the power, jurisdiction and discretion is vested in the government. It will only look whether

the authority has paid attention to or taken into consideration circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated malafide or satisfying a private or personal grudge of the authority.

Courts do not go into the merits of the exercise of discretion by the authority. They would not go into the question whether there was sufficient or adequate or satisfactory material for the authority to form its opinion.

Under the Preventive Detention Act, 1950 the executive is authorised to make an order of detention of a person if it is satisfied that it is necessary to do so to prevent him from acting in a manner prejudicial to any of the matters mentioned therein.

The Supreme Court held (Gopalan V. Madras AIR 1950 SC 27, Shibban Lal V. State of UP. AIR 1954 SC 179) that whether a person should be detained or not is purely a subjective decision of the detaining authority and it is not one for an objective decision of the court.

No court can sit in the place of the detaining authority whether or not it would have come to the same decision as the authority. In other words the court will not substitute its own satisfaction for that of the detaining authority. Nor will it go into the sufficiency of otherwise of the grounds of detention to question the subjective satisfaction of the authority.

In Gopalan's Case (AIR 1966 SC 816) it was held: "It has been clearly stated on behalf of the government of India that on the materials placed before it, it was so satisfied before it passed the order... In the face of this affidavit on behalf of the government of India, it cannot possibly be said that the orders passed..... were malafide."

In Arora A. U.P. (AIR 1964 SC 1230) the land of Arora was acquired by the state government under the L.A. Act for construction of a factory for manufacturing textile machinery parts for a company. The acquisition was challenged on the ground that the himself intended to erect a factory and therefore, the land intended to be used for one public purpose should not be acquired for another public purpose.

The court refused to quash the order of acquisition as it satisfied the requirement of public purpose as was stipulated by the Act and it was for the government to decide whether to acquire that particular piece of land for the purpose or not.

In Madras V. Sarathy (AIR 1953 SC 53) the supreme Court held that in making a reference under S. 10 of the I.D. Act of an industrial disputes to the Industrial Tribunal, the government was doing an administrative act and the factual existence of the dispute and the expediency of making a reference in the circumstances of a particular case were matters entirely for the government to decide upon. Under S. 12 government is required to record its reasons if it refuses to make a reference. The court would not examine the propriety, correctness adequacy or satisfactory character of the said reasons (State of Bombay V. K.P. Krishnan AIR 1960 SC 1223).

Where the authority has not acted according to law, the courts would merely quash the administrative action in question but not direct the authority to act in a particular manner. Where the authority issued a permit for one year, where the statute required the renewal of the permit from three to five years, the court could only direct the authority to grant the renewal of the permit for a period any where between 3 to 5 years without itself specifying the period. (Mohabbob Sheriff V. Mysore State Transport Authority AIR 1960 SC 321).

Where the range of discretion has been cut down to such an extent that only one decision is possible, the court may specifically direct the authority to act in that particular way (Union of India V. Indo-Afghan Agencies AIR 1968 SC 718).

But discretionary power is not completely beyond the pale of judicial control. The courts have expounded certain proposition, principles or tests to control such powers in certain situation and contingencies.

The principles fall in two major categories:

- (i) The authority has abused its powers or not properly exercised it; and
- (ii) The Authority has not exercised its power at all either because it has abdicated its power to someone else or fettered its discretion by self-created rules of policy.

The court's primary concern is to see that the discretion is exercised according to law. So it is the duty of the courts to see that the administrative body does not exceed its powers or go beyond the authority of law:

The courts, however, exercise only a marginal review over the discretionary power of the administration; much less than what they do with respect to the exercise of quasi-judicial powers.

The courts are concerned with the legality rather than the merits of the administrative action.

The idioms most commonly used to control administrative discretion are exercise of power malafide or in bad faith, or for an improper purpose, or after taking into account irrelevant or extraneous considerations, or after leaving out of account relevant considerations or in a colourable manner or unreasonably.

Some of these grounds are not distinct from one another but sometimes overlap with one another.

Though the courts do not consider the sufficiency or adequacy of the facts, yet they do examine the facts to find out their relevance to, or whether it was possible to draw the inferences from these facts in support of the grounds or conclusions mentioned in the order in question.

Till recently the courts were reluctant to compel the administration to disclose the reasons for administrative actions. In the absence of a statutory requirement to give reasons, the judiciary did not normally insist on the administration to disclose the reasons except where there was a provision for an administrative appeal or the authority was discharging a quasi-judicial function.

Where reasons are given, the court did not hesitate to quash the order on the ground of facts or circumstances being extraneous to the statute.

Where there was no requirement to give reasons, the court used to be satisfied with the administrative declaration that in its view there was justification for the action taken by it. However the Supreme Court has departed from this position somewhat in Barium Chemicals V. S.D. Agarwal (AIR 1969 SC 707). In both the cases

Investigatory orders were issued by the Central government against the companies concerned under S. 237 (b) of the companies Act, 1956 under which the government could order investigation, if inter alia there were circumstances suggesting fraud on the part of the management.

In the Parium Cases the court held that it was necessary for the government to state the circumstances which led it to make the order in question for being examined by the court. The majority was not satisfied with the mechanical repetition of the words of the section in the affidavit filed by the government in support of its action i.e. a mere executive declaration that there was material on which it could form its opinion.

The dissenting judges however held that the mere executive declaration that there was fraud ought to be enough.

However there was no dispute on the point that the court would not go into the aptness or sufficiency of the grounds upon which the subjective satisfaction of the authority is based. The court would only go into whether the circumstances mentioned in the affidavit were irrelevant or extraneous to the grounds mentioned in the order of the government.

In Rohtas case, the court held that the existence of the circumstances was open to judicial review.

In the case of a quasi-judicial body, it is obliged to make a speaking order and an order in the absence of reasons would be quashed on that ground; it is not so in the case of administrative body.

What the court has insisted upon in the two cases is that the administration should disclose to the court the reasons on which it has taken the action so as to enable the court to decide whether or not the exercise of the discretion is in any way vitiated.

It is not the position that the administrative action may be quashed merely for failure to supply the reasons to the person affected thereby.

The Supreme court has repeatedly asserted that it will look only at the order communicated to the individual and the affidavit filed by the government and will not examine the government record to find out the real reasons for the administrative action. Sakeena V.M.P. AIR 1967 SC 1264; Commr. of Police V. Gordhanas AIR 1952 SC 16).

In Barium case, Hidayatullah, J; did raise the question whether the court should not go behind the affidavit filed by the authority concerned where it disclosed the material in support of the order but did not decide it.

Abuse of discretion

Malafide: Malafide or bad faith means dishonest intention or corrupt motive.

Sometimes it may not be possible to determine whether or not the authority has exceeded its powers in a particular case because of the broad terms of the statute, but the action may be declared to be bad if the motive behind the action is not honest.

Here malafide is used in the narrow sense to mean an exercise of power out of dishonest intention or corrupt motive. In this sense, the motive force behind the action may be personal animosity, spite, vengeance, personal benefit to the authority itself or its relation or friends.

In *Pratap Singh V. Punjab* (AIR 1964 SC 72) the court held that the administrative action was taken for satisfying a private or personal grudge of the authority.

Here the appellant alleged that the disciplinary action against him had been initiated at the instance of the Chief Minister to wreak personal vengeance on him as he had refused to yield to the alleged demands of the Chief Minister and the members of his family.

The court held that malafide was proved and accordingly quashed the government order.

The decision shows even if the government acts within its legal authority, it could not act if the action was motivated out of malice.

In one sense it is an Ultra vires act in the sense the power to take disciplinary action is to ensure purity in the public services and not to wreak personal vengeance.

In another sense it is not ultra vires because the order was regular on its face, the government has a clear authority to take disciplinary action and the action was therefore intra vires. In this sense malafide is a distinct ground for quashing administrative action apart from ditra vires.

In Rowjee V. Andhra Pradesh (AIR 1964 SC 962)

The State Road Transport Corporation of Andhra Pradesh Prepared a scheme under the direction of the Chief Minister under which certain transport routes were proposed to be nationalised. It was alleged that the Chief Minister had acted malafide in giving the directions in the sense that the particular routes were selected by him to seek vengeance against private operators on those routes as they were his political opponents. From the course of events and the absence of affidavits from the Chief Minister denying the charge, the court concluded malafide.

The burden of proving malafide is on the individual making the allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for public benefit. The burden on the individual is not easy to discharge as he has to go into the motive or state of mind of the authority. The motive can be inferred from the course of events and other materials. It is not possible for the individual to collect sufficient evidence as he does not have access to the government's record. The course of events, public utterance of the authority, statements in the pleadings of affidavit filed by the authority, statements in the pleadings of affidavit filed by the authority or failure to file the affidavit denying the allegation etc. may lead to the establishment of the charge of malafide. The difficulty in proving malafide is so much that not many cases have come up before the court.

Improper Purpose

If the statute confers a power for one purpose, its use for a different purpose will not be regarded as a valid exercise of power and the same may be quashed. "Improper purpose" has become an important ground to control administrative action.

The order may look, on its face, proper, but the real purpose for which the order is made or the power has been exercised may be contrary to the purposes and objectives of the statute in question.

To determine "improper purposes" in a particular cases, it is necessary to go into the motives or the real reasons for which the administrative action has been taken.

Improper purpose is broader than malafide. Here the authority may be motivated by some public interest (as distinguished from private interest) but the action may be different from what is contemplated by the statute under which the action is taken.

It is not relevant to assess whether the authority has acted in good faith or bad faith, but what is relevant is to assess whether the purpose in view is one sanctioned by the statute which confers the power on the authority concerned.

Requisitioning of a house ostensibly to provide accommodation to the officer of the state but really as a means to eject the petitioner because of the religious susceptibilities of the landlord is an improper purpose. (Ahmed Hussain V. State AIR 1951 Nag. 138). The land here was ostensibly acquired for itself but really for another authority. The authority has power to do what it ostensibly did, but it really exercised its power to achieve some other objective and so the action was bad.

Irrelevant Consideration

Power conferred by the statute must be exercised on the considerations mentioned in the statute or relevant to the purpose for which it is conferred.

If the authority takes into consideration circumstances, events or matters which are irrelevant or extraneous to those mentioned in the statute, the action may be ultra vires and may be quashed.

If the Act itself spells out the relevant criteria which have to be taken into consideration in exercising the given power, then the task of the court is some what easy, as they can see whether a consideration is mentioned in the Act has affected the exercise of the power.

If the relevant criteria are not spelt out in the Act, the court will look into the purpose and provisions of the Act to assess whether extraneous or irrelevant considerations have been applied.

In State of Bombay V. K.P. Krishnan (AIR 1960 SO 1223) the government refused to refer an industrial dispute with regard to the payment of bonus for a certain year to the tribunal for adjudication for the reason that the "workmen resorted to go slow during the year". The court held that the reason given by the government was extraneous and not germane to the dispute. The government has acted in a punitive spirit and this was contrary to the objective of the statute which was to investigate and settle disputes.

The court said that the government could refuse to refer the dispute on the ground that the dispute is stale, or is opposed to the provision of the Act, or is inconsistent with any agreement between parties, but not to discipline the workers.

In Baruim Chemicals case also, the court found that the facts disclosed by the government had no relevance to the question of fraud by the company. (The basis of the government order of investigation was that there had been delay and faculty planning of the project resulting in double expenditure and continuous losses to the company, that the value of its share had gone down considerably and that some eminent persons had resigned from the Board of directors).

In P.J. Irani V. Madras (AIR 1961 SC 1731) the government was empowered under the Madras Rent Control Act to exempt any building or class of buildings from the provisions of the Act. The object of the Act was to control the rents and to prevent indiscriminate eviction. It was transpired that the government used the exemption power to evict a tenant in the building who had continued in possession after the termination of his tenance. The court held that the reasons for which the government had granted the exemption were extraneous and the order was held invalid.

Usually the purpose for which an administrative power is being conferred or the consideration on which the same is to be exercised is not normally mentioned in the statute. The courts have to spell out the same from the tenor of the Act in question. The court can either say that the power has been exercised for an improper purpose or on irrelevant consideration. In both cases the action is ultra vires exceeding its authority.

Mixed considerations.

If the action is taken partly on relevant and partly on irrelevant consideration on mixed considerations it is an action taken. The judiciary does not take a uniform approach in such cases.

In detention cases it has taken the strict view and has held such an order invalid on the ground that it is difficult to say to what extent the bad grounds have operated on the mind of the administrative authority and whether the authority would have passed the order only on the basis of the relevant and valid grounds.

In Shibbanlal V. State of U.P. (AIR 1954 SC 179) the petitioner was detained on two grounds, (i) his activities were prejudicial to the maintenance of supplies essential to the maintenance of public order. Later the government revoked his detention on the first ground as either it was unsubstantial or non-existent but continued it on the second. The court quashed the original order on the ground that the very exercise of the power was bad. Though the court appears to be strict in detention cases, it is not so in others.

The court's decision would depend on whether or not the exclusion of the irrelevant or non-existent grounds would have affected the ultimate decision.

In Maharashtra V. Babulal Kriparam (AIR 1967 SC 1353) the State government superseded the Municipal Corporation on two grounds, viz., deterioration of financial position of the corporation because of over-spending and (ii) its neglect to improve water supply.

The Supreme court came to the conclusion that the first ground could not be sustained as on reasonable person on the materials placed before the government could possibly form the opinion that the charge was proved. The second ground was correct.

The court did not quash the order as it felt that the state government would have passed the order on the basis of the second ground alone.

The show-cause notice issued by the government to the corporation had used the language "the grounds aforesaid jointly as well as severally appear serious enough to warrant action".

The principle appears to be that an administrative order based on both relevant and irrelevant (or non-existent) considerations is valid if the court is satisfied that the authority would have passed the order even on the basis of the relevant and existing grounds and the exclusion of the irrelevant or non-existent grounds and the exclusion of the irrelevant or non-existent grounds would not have affected the ultimate opinion or decision.

Leaving out Relevant Considerations

If the authority leaves out relevant considerations its action will be invalid. It is very difficult to establish this, unless detailed reasons are given from which it can be inferred that the authority took action after ignoring material consideration.

Not many cases have occurred in this area. In Shemugam V. SKV (p) Ltd. (AIR 1963 SC 1626) the Regional Transport Authority called for application for stage carriage permit for certain routes. Under the statute the Authority had wide powers to grant these permits. The discretion was attempted to be controlled by the government by presenting a marking system under which the marks of the different applicants were to be determined

on the basis of viable unit workshop, residence (branch office) on the route, experience and special circumstances. The respondent was not given any mark for the branch office on the route. The action of refusal of permit was uashed.

Colourable exercise of power

At times courts use the idiom 'colourable exercise of Power' to denounce an abuse of discretion.

Colourable exercise means under the colour or guise of power conferred for one purpose the authority is seeking to achieve something else which it is not authorised to do under the law in question.

This may come under impropose or irrelevant considerations and sometimes even under malafide.

Reasonable exercise of power

The courts have sometimes used the language that the authority should consider the question fairly and reasonably before taking action.

'Unreasonable' may include 'malafide', acting on irrelevant considerations, improper purpose etc. and is not an independent ground.

However, unreasonable exercise of power may furnish an independent ground for interference by the courts where the constitution of India so requires.

Article 14 guarantees equality before law, but have permitted reasonable classifications to be made. A view was taken at one time that if a law was valid under Article 14, a discriminatory administrative action would not be violative of the equality clause (AIR 1951 Bom 132). But in Mannalal Jain V. Assam (AIR 18 52 SC 1559) the court struck down the discriminatory administrative action even though the law was valid.

The law may provide for reasonable administrative behaviour, e.g. reasonable ground to believe by an authority to take action. It was argued that "reasonable belief" was a justiciable issue and that there should be material on record to show that the belief could have been reasonable. "Reasonableness" provides a quite flexible basis for judiciary to interfere.

In Nakkuda Ali V. Jeyaratne (1951 AC 66), the Privy Council held that when the legislature used the word "reasonable" it must have been intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. The words used were "where the controller has reasonable ground to believe that any dealer is unfit to be allowed to continue as a dealer". The court held that through the belief of the controller that the dealer was unfit was subjective, existence of reasonable grounds on which the belief could be founded was objective and a limitation on his power.

The courts have been reluctant to import the requirement of reasonable ~~ness~~ into a statute by implication. However, in certain cases, the statutory language "if he is dissatisfied" has been held to mean "if he is reasonably satisfied" (AIR 1956 Pat. 104) whereby the court held that the satisfaction cannot be arbitrary but should be objective. This appears to be an exception rather than a rule.

In some case the courts have stated that they would quash an action if no reasonable person on a proper consideration of the materials would have reached the decision. (Rohtas Case).

Authority not Applying its mind

If the authority takes action without applying its mind, the action is bad. In such cases the authority is deemed to have failed to exercise the discretion, or not to have considered the case before it.

Acting under dictation

Where the authority a sub delegates its power to its subordinates without statutory power to do so. When the statute confers power on designated authority, it indicates that the legislation has placed trust in the judgement of that authority. It must therefore decide the matter itself and it will not be proper for it to abdicate its power.

Another situation of non-application of its mind by the authority arises when it acts under the dictation of a superior authority and does not consider the matter itself. This is law would amount to non-exercise of its power by the authority and will be bad. Commissioner of Police V. Gordhandas Bhanji (AIR 1952 SC 16) illustrates the point. Under the Bombay Police Act, the Commissioner is given power to grant licences for the construction of cinema houses. The Commissioner granted the licence on the recommendation of an advisory committee but later cancelled it at the direction of the state government. The cancellation was held bad as it came from government and the Commissioner merely acted as a altransmitting agent.

In Punjab V. Hari Kishan (AIR 1966 SC 1081), the Punjab Cinema Regulation Act, 1952 required the obtaining of a licence for exhibiting cinema. The Licensing authority was the district magistrate. Subject to the control of the state government the licensing authority can grant licenses. An aggrieved person could appeal to the government. The application made to the licensing authority was forwarded to the state government which rejected it. Such a procedure was adopted under instruction issued by the government to the licensing authority. The court held in this case. The jurisdiction to deal with application for licence had been conferred on the licensing authority and it could either grant or refuse licence. The state government would come only as an appellate authority when the licensing authority refused to grant licence. The state government cannot assume to itself the power to deal with the application in the first instance on merits.

About the "control", the court held that whatever be the ambit of control it could not justify the government to completely oust the licensing authority and itself usurp its function. The control might justify the issue of general instruction or direction by the government to the licensing authority and they may act as guidelines for the authority in dealing with the applications.

There is a difference between seeking advice or assistance and being dictated. Advice or assistance on it and itself takes the final decision in the matter before it.

Imposing Fetters on the Exercise of Discretion

Another situation of not applying its mind arises, when the authority having discretion imposes fetters on its discretion by announcing rules of policy to be applicable rigidly to all cases coming before it for decision.

The discretion is expected to be exercised from case to case and it should not be fettered by declaration of rules of policy to be followed by it uniformly in all cases. It should consider each case on its own merits and decide it one way or the other.

In Gell V. Teja Noora (1903) 27 ILR Bom 307 under the Bombay police Act, 1863, the Commissioner of Police was given discretion grant or refuse licence for land conveyance. Instead of applying his discretion after examining each carriage, he issued a general order setting forth the details of construction which he required to be adopted in granting licences and stated that he had a sample **victories** prepared and that all new victorias should conform to that model. Holding the order to be illegal, the court stated that the discretion had to be exercised after the Commissioner had made himself in some way acquainted with the character of the carriage to be licensed and had considered whether it was fit for the conveyance of the public. He should not fetter himself with rules which would prevent him from considering the merits of each case.

One of the reasons for conferring discretion is that the problem is such that it is not possible to reduce it within the four corners of a rule. This should not mean that the administrator should not be encouraged to lay down some general norms of policy even though the statute has failed to lay down so.

The desirability of laying down rule will have to be reconciled with the duty of the authority not to fetter his discretion. Such a balance could be achieved if the authority lays down a general rule or policy but at the same time keeps its mind open to consider whether in a particular case before it that policy or rule is applicable or not. Such case should be decided on merits and not by a strict application of the rule.

Acting Mechanically and without Due Care

Another situation of not applying mind is typified in an old case Emperor V. Sibnath Banerjee (AIR 1945 PC 156) where a preventive detention order was cancelled because it was issued in a routine manner on the advice of the police without the home secretary himself applying his mind to the materials before him one satisfying himself independently of the police recommendation. It transpired that the Home Department followed a practice of practically issuing the detention order automatically when the police recommended it. The court held in this case that the Home Secretary's personal satisfaction was a condition precedent for the issue of the detention order. If the authority does not act with due care and caution and with a sense of responsibility in exercising the discretion, there again it would be a case of not applying its mind and acting mechanically.

In Jaganath V. State of Orissa (AIR 1966 SC 1140) six grounds were mentioned in the detention order on which the subjective satisfaction of the govt. was formed. These grounds were verbatim reproduced from the relevant provisions of Act. It was transpired that the Home Minister mentioned only two grounds on which his personal satisfaction to detain the petitioner was based. The court came to the conclusion that the minister has not applied its mind to all the grounds mentioned.

(Ref: M.P. Jain & S.N. Jain:
Principles of Administrative Law)

Importance of adhering to inquiry procedure
expressly laid down

In a case decided by the Himachal Pradesh High Court,* an Investigator belonging to the National Sample Survey was charged with funding of his work Diary by making false entries and showing fictitious work therein. A departmental inquiry was conducted by an Inquiry Officer under the CCS (CCA) Rules, 1965 and according to the inquiry report it was proved that in certain specific instances, the Investigator had made false entries in his Diary. The disciplinary authority agreed with the findings of the Inquiry Officer and removed the Investigator from service. The Investigator went to the Court.

2. While closely examining the records of the inquiry, the High Court found that the Inquiry Officer had not followed the specific provision laid down under Rule 14 (11) of the CCS(CCA) Rules, 1965. According to this provision, where the charged officer does not appear before the Inquiry Officer within the prescribed time-limit, the Inquiry Office has to adjourn the hearing after recording an order allowing the charged officer to inspect the relevant documents, to submit a list of his witnesses and ask for production of documents not already listed. In this case the Inquiry Officer did not record any such order and instead straightway proceeded to record evidence of the prosecution witnesses. The specific requirement of the said rule 14 (11) was thus violated.

* S.D. Bhardwaj vs. Union of Indian and others, LPA No. 23 of 1973 decided on 15.7.1982 (reported in SIR January, 1983-pp. 32-38).

3. The court further found that the Inquiry Officer permitted examination of a prosecution witness who was not listed in the charge-sheet. But while doing so, he failed to observe the procedure laid down under rule 14 (15) of the said rules, under this provision, a specific order about the need for taking additional evidence has to be recorded by the Inquiry Officer and the charged officer is entitled to an adjournment. In this case a new prosecution witness was examined without conforming to this procedure.

4. From the records of the inquiry it was further noticed that certain statements were recorded during these statements were taken into consideration by the Inquiry Officer while recording his findings but the statements during the preliminary investigation in question were not brought on the record of the inquiry and the charged officer did not know anything about them. According to the High Court, this amounted to denial of reasonable opportunity to the charged officer under Article 311 of the Constitution.

5. In view of the clear violation of the statutory Provisions relating to the procedure to be followed for conducting the inquiry, as summarised in the foregoing paragraphs, the High Court declared the inquiry as vitiated and quashed the Government's order of removal of the Investigator from service.

THE ONE WHO DECIDES MUST HEAR

S.N.Jain*

THE JUDICIAL process differs from the administrative process in one important respect. Whereas the exclusive task of the judiciary is to adjudicate on disputes, an administrative authority may have to discharge various other duties besides adjudication. This has resulted in the adoption of two different procedures of adjudication in case of the two processes. Judge himself hears and decides, but this may not be true of an administrative authority. In order to discharge the multifarious duties entrusted to it, an administrative authority not only takes but is compelled to take the assistance of subordinates. It may happen that one official may hear and another decide. This division in the decision-making process goes against the basic concept of the judicial process, though this is inevitable in the context of the modern administrative process. It is the task of the administrative law to reconcile this inevitability of the administrative process with fairness from the individual's point of view.

The advantage of "the one who decides must hear" is that the individual is able to address directly to the person who really counts, and the adjudicator is able to watch the demeanour of witnesses and decide himself on the evidence presented to him and no one else. On the other hand, if hearing is conducted by someone else, the adjudicator merely acts vicariously and there is the problem of adjudicator familiarising himself with the evidence collected by others. Consequently, the chances of error by him relatively increase

* LL.M., S.O.D. (Northwestern), Director, The Indian Law Institute, New Delhi.

The Supreme Court gave a fierce blow to the administrative practice of one hearing and another deciding by declaring in the famous Gullapalli case¹ that such a practice was destructive of "judicial hearing". This was, however not a mortal blow as even after the Gullapalli case the administrative practice continues and in no other case subsequent to this case there has been condemnation of it. Neither has there been countenance of it. In taking the view which the court did in the Gullapalli case, it was exacting a higher degree of fairness from the administrative process in India than the United States or the United Kingdom. This case is a prologue to what is to follow in this paper, and we are not concerned with it further.

Assuming the validity of the rule that one may hear and another decide, what procedural safeguards ought to exist for the individual? In a few cases the question has arisen whether it is legally required to show the report of the hearing officer to the individual concerned before the final decision is taken by the deciding authority. Here the Supreme Court has oscillated, but on the whole, oddly enough, it has not demanded the same degree of fairness from the point of view of the individual as in case of the application of the proposition "the one who decides must hear" it-self. If in the latter case it has overdone it,² in the former case it has stopped short of the fair norms of hearing.

1. Gullapalli Nageswara Rao N. A.P. State Road Transport Corporation, A.I.R.

2. See Deshpande, the one Who Decides Must Hear, 2 J.I.L.I 423 (1959-60); Nathanson, The Right to Fair Hearing in Indian, English and American Administrative Law, i. J.I.L.I. 493 (1958-59).

In Suresh Koshy George V. University of Kerala,³ a disciplinary action was taken by the University against a student for malpractices during the examination. The enquiry was conducted by a person appointed by the vice-chancellor who was the ultimate deciding authority. After the inquiry, the vice-chancellor issued the show cause notice. Neither was the copy of the report asked for nor was the student supplied with it. Repelling the contention of the student that he should have been given the report of the inquiry officer, the court stated:

There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Art. 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show cause notice is provided by law, from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the person proceeded against or that another inquiry should be held thereafter.

An approach different from the Suresh Koshy case is depicted by the Supreme Court judgement in Kesava Mills Co. Ltd. V. Union of India.⁵ In this case the Government of India had appointed an investigating committee to investigate the affairs of the mills under the Industries (Development and Regulation

3. A.I.R. 1969 S.C. 198.

4. Id. at 204.

5. A.I.R. 1973 S.C. 389.

Act, 1951. The committee submitted the report to the government after giving a reasonable opportunity to the mills, but the report was not shown to the management. As a result of the report of the committee, management. As a result of taken over under section 18 of the Act. In the opinion of the government there was substantial fall in the volume of production of the mills for which the government apparently found no justification having regard to the prevailing economic conditions. It was held by the court that it was necessary for the government to observe principles of natural justice before taking action under section 18-A of the act and to give a hearing to the mills. However, the court was not ready to lay down and inflexible rule that the report of an inspector (here the investigating committee) was not necessary to be disclosed to the party concerned. "Whether the report should be furnished or not must.. depend in every individual case on the merits of that case". In the instant case the court was satisfied that the non-disclosure of the report of the committee did not cause any prejudice whatsoever to the mills as the management, on the facts of the case, had been given sufficient opportunity to present its case before the government against the take over of the mills.

In the recent judgment in Shaid Lal Gupta V. State of Punjab 6 the Supreme court again fell back on the Suresh Koshy case. In this case the appellant was a clerk in the treasury at Ludhiana against whom disciplinary action of withholding one increment for one year with cumulative effect was taken under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. This was a minor penalty under the rules and for imposing minor penalty it was provided in the rules that the employee concerned was to be given an adequate opportunity of making any representation that he may desire to make. (There was no provision for examination of witnesses, cross-examination of witnesses and furnishing a copy of the report of the enquiry officer as in the rule providing for procedure for imposing a major penalty.) The decision to with hold the increment was taken by one deputy secretary to the government. But before the decision, the deputy

secretary has caused a local enquiry to be conducted by a subordinate official. The enquiry report was not shown to the appellant. Relying on the Arlidge 6 a and the Suresh Koshy cases it was held by the court that principles of natural justice did not require that the enquiry report should have been supplied to the appllant.

The holding of the court in the Suresh Koshy and Shadilal cases goes against the recommendations of the Franks Committee of England and the provisions of the Administrative Procedure Act 1946 of the United States. In proceedings involving decision by the minister in compulsory acquisition of land, town and country planning and slum clearance, the Franks committee had recommended that the report of the inspector who conducts the hearing on behalf of the minister should be published and that parties should have an opportunity, if they so desire, to propose corrections of facts in the inspector's (hearing officer's) report. 7 This recommendation was not accepted by the governments, but it has been argued by Wade that the practice contained in the Franks Committee recommendations is followed in Scotland "and ideally England ought to follow suit"8. However, the difference between the English situation and the Indian situation should be noted. In England, in such inquiries the minister's decision involves policy and the inspector's report is only one of the factors to be taken into account in arriving at the ultimate decision by the minister. The whole procedure is administrative with the superadded requirement of hearing at some stage. But such is not the position in the three Indian cases mentioned in this paper where the function involved was adjudicatory all through in the sense that the parties were to be given a hearing before taking the decision and the ultimate decision was not completely subjective but had to be based on the evidence collected through the hearing.

7. The Report of the Committee on Administrative Tribunals and Enquiries 73-74.

8. Wade, Administrative Law 234 (1971).

There is a clear provision in the Administrative Procedure Act of the United States the hearing officer shall first make an initial or recommended decision which should be available to the parties before the final decision and an opportunity given to the parties to make representations against the proposed decision of the hearing officer. Schwartz points about:

In the United States the common practice has.. been for reports prepared by administrative hearing officers to be submitted to the private individuals concerned. It has, in fact, generally been assumed by American administrative lawyers that those affected have a constitutional right to see the report and to take exceptions to it before the decision of the agency is rendered. For an agency decision to be based on upon a secret report; by an examiner or some other officer, would be for it to violate the right of the private party to have his decision based only upon materials which he knows and is given an opportunity to meet. 9

Further, according to him the "American court's rejection of the Arlidge holding of non-disclosure was based primarily upon the fundamental principle against ex parte evidence which governs all adjudicatory proceedings. " 10 He quotes with approval the opinion of the Chief Justice Vanderbilt that, "the hearing officer can be characterized as a 'witness' giving his evidence to the judge behind the back of the private individual who has no way of knowing what has been reported to the judge." According to him whatever actually plays a part in the decision should be known to the parties and be subject to being controverted by them. If the report is not shown to the party concerned doubt may well arise as to whether the true view of the facts has been taken. There is a danger that the hearing officer may have drawn an erroneous conclusion in his report or may have committed some factual blunders. It is, therefore necessary that the report is available to the party. Finally, Schwartz argues, "(w) will not the inspectors' report, like the opinion of a court, be a more considered and conscientious product if it has to turn the gantlet of public scrutiny." 12

9. Bernard Schwartz, An Introduction to American Administrative Law 156 (1962).

10. Id. at 157.

11. In Mazza v. Cavicchia, 105 A.2d 545 (N.J., 1954)

12. Supra note 9 at 159.

As the practice of one deciding and the other hearing is often indispensable in administrative process and has come to stay, it is appropriate to evolve norms of fair procedure from the angle of the individual. The minimum that should be insisted upon is that the hearing officer should make his own findings and conclusions and recommended decision which should be available to the parties for comments. Prior to the final decision, the parties should be given an opportunity to make exceptions to those in writing before the deciding authority. In the United States, it may be noted, the Administrative procedure Act provides for an opportunity to take exceptions at both the stages at the state of hearing by the hearing officer and at the final stage of decision-and at times the administrative practice permits even oral hearing at the latter stage.

There may be exceptional situations when it may be inadvisable for the administration to disclose the report of the enquiry officer to the individual on account of protecting public or some other interests. A difficult case in this regard is *Hira Nath Mishra v. Rajendra Medical College*.¹³

There may be exceptional situations when it may be inadvisable for the administration to disclose the report of the enquiry officer to the individual on account of protecting public or some other interests. A difficult case in this regard is *Hira Nath Mishra's v. Rajendra Medical College*.¹³ there was a charge of molesting girl students in their hostel against the appellants, the four male students. The facts of molestation were that the boys had walked naked in the girls' hostel and tried to pull the hands of one of the girl students through the window. The Principal of the college constituted an enquiry committee of three teachers

13. A.I.R. 1973 S.C. 1260-.

to enquire into the charges. The evidence of the girls was taken behind the back of the students but they were given the substance of the complaints made by the girls without disclosing their names. The report of the committee was submitted to the principal. On the basis of this report which was treated as confidential, the students were expelled from the college for a period of two years by the principal. It was held by the Supreme Court that in the circumstances of the case there was no violation of the principles of natural justice. If the girls' identify would have been disclosed and the students given the right of cross-examining them, the girls would have been under constant fear of molestation by the boys. "The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the (committee) report to them (boys)." It seems there would have been no harm if the report of the committee had been supplied to the boys after omitting the names of the girls from the same. The normal rule should be available to the party before the adjudicatory authority takes the final decision and this rule should be departed from only in a clear situation where the disclosure, on balance, would result in greater harm than the harm resulting to the individual from non-disclosure (i.e. denial of fair procedure.)

PREVENTIVE VIGILANCE

DO'S AND DON'TS ISSUED BY RESERVE BANK OF INDIA

DO'S

1. Remember, each one of us as a public servant is expected to act honestly and faithfully at all times.
2. Always demonstrate a sense of fair play and impartiality in disposing of cases; it is paying.
3. Show courtesy and consideration in Public dealings; it will knock out the basis of public grievances.
4. Maintain strictest secrecy regarding the Bank's affairs whatever be the provocations; this is the least expected of you.
5. Observe scrupulously the rules and regulations concerning your personal conduct, it will not embarrass you any time.
6. Be discriminate in attending parties hosted by the Bank's constitutents, clients etc; it helps you in dispensing clean and efficient service.
7. Avoid seeking and receiving cash donations and advertisements from the Bank's clients, constituents, business associates etc. even for a good cause; lest it places you under obligation.
8. Attend to public grievances promptly, it improves the image of the institution.
9. Dispose of cases promptly but without undue haste; it helps.
10. Remember to date your signature always, it will avoid complications.
11. Get all oral instructions and decisions of the higher authorities down in writing and get them confirmed, it is in your own interest.
12. "Paper" (i.e. get all reasons down on paper) your every decision; it will save you from harassment.

13. Lay down a time schedule for each stage of the job concerning the public; it dispenses with all kinds of gossips.
14. Do intensive monitoring of delays and disposals or fired; it helps curbing corruption.
15. Give job rotation to those who are on sensitive desks, lest vested interests grow.
16. Pay particular attention to the procedures and do not delegate them to the subordinates; it is a good way of preventive vigilance.
17. Keep on assessing the strength of the "internal control"; this is the surest way to reduced malpractices.
18. Publicise the rules and procedures, as widely as possible in simple words and make them less cumbersome; it dispenses with the necessity for "speed money".
19. Pay surprise and frequent visits to the places visited by the public and other places where stationery and stores are kept; it will give you a good feed back of the happenings.
20. Remember always that corruption starts in a small way, it would thus be wise to put a brake in the initial stage itself.
21. Corruption has no price tag attached to any class of employee.
22. Keep a quiet watch over the style of living, types of visitors etc. of the employees posted on sensitive desks; it will help detection of corruption at early stages.

DON'TS

1. Do not yield to temptation or run after petty gains; it does not pay ultimately.
2. Do not solicit, seek or accept any gift or valuable either from the constituents of the Bank or from anyone, more than what is permissible under the rules; it is not a good conduct.
3. Do not live beyond your means; it is tempting but torturous.
4. Do not engage in any commercial proposition nor allow anyone dependent on you to do so; it does not further your interests.
5. Do not make any effort/endeavour to flout or circumvent the rules or regulations; it creates tension in you.
6. Do not make any attempt to short-circuit the prescribed procedure; it may prove risky.
7. Do not take any obligation in any form from anyone; it may become a boomerang.
8. Do not take any obligation in any form from anyone; it may become a boomerang.
9. Do not allow your family members to use your name for personal gains; it is not a good habit.
10. Do not use your influence for securing any advantage for yourself or anyone related or known to you; it does not speak well of you.
11. Do not enter into any borrowing arrangement with any bank except within the prescribed frame work; it may amount to misuse of official position.
12. Do not make any false bills or make any attempt to falsify any account; it may cost your career.
13. Do not cultivate too much friendship with Bank's contractors, suppliers etc.; this may not be in your interests.
14. Do not take a decision in a case where you have interest or your relations are involved but let the files move without your intervention.

15. Avoid getting influenced by personal prejudices while disposing of files.
16. Do not relax while you are on invigilation or duties; this may bring troubles for you.
17. Do not show any favouritism nor commit any irregularity in inviting tenders and awarding contracts; your reputation will be affected.
18. Avoid misuse of the Bank's car or any other Bank's property in your care.
19. Avoid taking or giving dowry in any circumstances, as this is statutorily prohibited and socially reprehensible.
20. Never fail to seek prior permission for acquisition or disposal of immovable property of any amount; it may land you in difficulties.
21. Never forget to report about the acquisition of movable properties within 7 days from the date of transaction, if the value exceeds Rs.2500/-; this is an important check.

NOTES ON TENDER ACCEPTANCE PROCEDURE

BY SHRI A.C. PANCHDHARI, CHIEF TECHNICAL EXAMINER

All Public Works are required to be carried out by open tender system except for 'secret' and 'very high priority' work for which restricted tenders are called. The difference between an open tender and a restricted tender is that in the former all eligible contractors can offer their rates for the work whereas in the case of limited tender system, only those contractors who are within the restricted list are allowed to tender. In the later system sometimes security reasons may preclude call of tenders through newspapers.

A tender is an offer by an intending contractor given to the tender inviting authority indicating his willingness to carry out the work at a certain rates. This offer by the contractor becomes binding and turns into a contract only when it is accepted in a form which is acceptable to both parties and the acceptance is complete against both parties. Normally tenders are expected to be accepted within a reasonable period of.

The acceptance of a tender involves many responsibilities and it creates obligation between the parties to the contract which are both legal and mandatory. Till the time the tender is accepted and it becomes a contract, both the parties are free to withdraw their offers and no damage flows from these withdrawals unless it is specifically mentioned in the

Notice inviting Tender. On the other hand once a contract is entered into and there is a breach of contract by the other party, the damages are substantial and can be enforced in a court of law. Hence the tender acceptance is onerous job ... full of sanctity ... and cannot be taken lightly.

In a Government, semi-Government or public sector undertakings, certain authorities are designated as competent to commit the organisation vis-a-vis private contractor for a work for which payment will be ensured by the organisation. It is, therefore, very much necessary that such competent authorities are completely and duly specified. In the case of public works department and similar organisation, the authority competent to accept tender is specified under the Constitution whereas in the case of public sector undertakings, the authority competent to accept the tender would be according to the Articles of association of that Authority. Any tender accepted by an authority not competent to accept the tender becomes a personal contract and the organisation is not responsible for the same. Hence before any tender is accepted for any authority, this aspect whether the said authority is competent to accept a tender or not is to be seen. For example, in the case of public works department, Executive Engineer is the competent authority to accept a tender but the works of Interior Decoration the tender has to be accepted by the Chief Engineer.

The Indian Constitution lays down fundamental rights of an Indian Citizen which includes unrestricted access to a profession. However, it has also been

recognised that an organisation registers suppliers and contractors according to certain norms laid down by the organisation and the tender of the organisation would be open only to those registered contractors. Unregistered contractor cannot ask for a tender as a matter of right. Non-registration of contractors is fraught with the danger that any person who does not have proper financial or managerial capacity, can quote for a work and it might be difficult for the organisation to reject his quotation. Once such unsound party is given a work, it would be difficult to get the work completed either in time or within the funds available. Legal redress under such circumstances is a long drawn out process.

T E N D E R

It is necessary that all tenders are called for in the most public fashion possible. It is necessary to ensure that proper newspaper publicity exists as in many cases there may be a possibility that although the officer concerned might have passed order for a newspaper publicity, such a publicity does not occur. It is also necessary to ensure that proper time gap is available between the notice calling for offers and actual receipt of tenders. It is required that necessary tender papers are also available for sale when a Notice Inviting Tenders is published in the newspapers. The tender papers should be complete in all respects including the drawings, specifications, schedule of quantities, condition of contract etc.

The contractors intending to give their offer should be encouraged to seal their offers and submit them to the authority concerned. The normal procedure is to keep a box which the contractors are expected to drop their sealed

envelopes. This ensures that the tenders cannot be given later than the closing time as exactly at the correct closing time, the slit in the box could be covered and late offers could be avoided.

Once the box is sealed, it should be opened in the presence of **intending** contractors at the time given for opening. When the box is opened, all the envelopes, papers etc. should be taken out and opened. It is very much essential that this operation of opening of the tender is carried out in a quiet atmosphere as it is at this stage much of the mischief could be played.

With a view to avoiding possibility of original tender documents being tampered with, the following procedure should be adopted in connection with the receipt and opening of tenders and their acceptance:-

(a) The officer opening the tender should invariably date and initial the corrections, conditions, additions, erasures, different inks etc. in the schedule of quantities and other documents submitted. On the pages of the tender documents, a certificate should be given whether the particular page contains any corrections, additions, over-writings etc. and this should be recorded in writing by the officer concerned. All corrections, additions over-writings should be numbered serially, page wise.

(b) All markings should be carried out in red ink.

(c) Any ambiguity in rates quoted by tenders in words or in figures should be clearly indicated at each page of the schedule attached to the tender to which it concerns.

(d) Wherever the rates quoted are in rupees, the word 'only' should be invariably added after the word in Rupees and the corrections should be initialled and dated with suitable remarks.

(e) If the contractors have omitted to quote rate in figures, the omission should be recorded by the officer opening the tender on each page of the schedule. The contractor should be encouraged to quote entire rate in words including paise to avoid chance of tampering with in rates; if the contractor fails to do so, the officer should himself write the rates in words at the time of opening of tender.

This authentication of the tender document at the time of opening of the tender would avoid chances of tampering in rates at a later stage when the tender documents are being processed further for acceptance.

It is necessary that the rates quoted by the contractor are read out of the contractor who are present at the time of opening of the tender.

A complete, comparative statement of the tenders received in response to the Notice should be drawn up and the officer opening the tender should prepare in their own hand, a statement of tenders received alongwith their rates and should sign the statement.

Many times, alongwith tenders, letters are received indicating conditions under which the offer is made. Many of these conditions have financial implications which require detailed scrutiny. At the time of preparation of the comparative statement, it should be noted down that such a letter has been received.

After words, detailed arrangement should be made for proper check of the tender which includes arithmetical check, scrutiny of conditions which have financial implications and the impact thereof and preparation of final comparative statement. It is necessary that this scrutiny is done very intelligently and also proper arrangements are made for safe custody of the tenders and the comparative statement while computations are being made.

It is necessary that there should be no hurrying of the work of computing tenders and finding out the financial implications and reasonable time should be allowed to see that the check has been properly done. At the same time a tender is required to be accepted or rejected within a reasonable period of time after the receipt of tender. In many of the tenders, a time limit should be which the prices are firm is specified. If this time limit is not adhered to that the chances are that contractor may withdraw his offer and no action can be taken against him. Hence top priority should be given to deciding the award of work on receipt of tenders. In order to minimise chances of delay, the following time-table has been laid down by the C.P.W.D.

Tenders within the power of Asstt. Engineer	7 days
---	--------

Tenders within the power of Executive Engr. to award	7 days
---	--------

Tenders requiring order of authority higher than Executive Engineer:

Scrutiny and disposal at E.E's level	10 days
--------------------------------------	---------

at S.E's level	7 days
----------------	--------

at Chief Engineer's level	10 days
---------------------------	---------

In the case of lumpsum contracts it requires more scrutiny and hence two more days are allowed at each stage:

The rates at which the contracts are let out should be reasonable considering the market conditions and several factors pertaining to particular work. Variation upto 5% only in rates received as a result of call of tenders and the rates prevalent in the market could be overlooked in case of emergency. Variations upto 10% may be allowed but in no case rates higher than the market rates beyond this percentage should be accepted. It is not correct for an officer to accept the lowest tender without reference to the market conditions. Factors like availability of transport, labour, skilled and unskilled, remoteness of locality which are responsible for the variation between the estimated rate and the contracted rate should be converted into monetary terms. The plea that it is very difficult to justify the high rates as the rise in rates are due to various factors which are not quantifiable is not tenable if the executive officers keep themselves abreast within the changing circumstances a proper estimate could certainly be made.

Many times there are conditions quoted by the tenders which are not very clear or the rates quoted are high and it requires a dialogue between the contractor and the department in order to have an acceptable tender. While conducting negotiations, it should be ensured that sanctity of the tender system is not violated. Otherwise there is a tendency on the part of the contractors to make tenders tentative rather than competitive.

Negotiations when carried out should be conducted only by an authorised officer. In case of tenders costing more than Rs. Two lakhs in C.P.W.D. an officer

not below the rank of Supdg. Engineer is expected to conduct negotiations. In case of railways the tender committee competent to recommend acceptable of the tender carry out negotiation.

Negotiations can be carried out in two fashions:-

- (1) known down system as followed in the C.P.W.D.
- (2) All eligible and competent contractors allowed to re-quote.

The second system is followed in Railway.

In the case of system followed by the C.P.W.D. negotiations are conducted with the contractor whose quotation is the lowest and a final offer a decision is taken whether to accept it or to reject it. If a decision is taken to reject, the dialogue is opened with the second lowest contractor. In the case of the other system, once it is decided to carry out the negotiations, the contractors may be asked to quote their rates again at a specified date and time and on the basis of such quotations, final decision is taken. There are plus and minus points in both the system and it is needed that the organisation follows one system consistently.

Once the tenders are accepted, the acceptance letter should be sent to the contractor immediately by the competent authority to do so. While communicating acceptance, the letters and the correspondence which form part of the agreement should be clearly stated.

Tenderers whose tenders are rejected should also be sent written intimation about the fact of rejection.

The tender documents which are forming the contract finally should be the original documents and not copies. If a certain tender as filled in by the contractor has been superseded completely, the old tender with the cancellation mark should also be available as a part of the original agreement.

During inspection of various works, following lacunae have been observed:-

- 1) Tenders not called in open manner.
- 2) Tenders sold to unauthorised contractors.
- 3) Intending contractors not being given an opportunity to study the site and document properly on account of insufficient time.
- 4) Receipt of the tender and the opening thereof being carried out in a suspicious manner.
- 5) Tenders considered for acceptance without proper earnest money in details in financial terms.
- 6) Tenders received are not authenticated both in respect of the rates quoted and the correction etc.
- 7) Non-preparation of comparative statement with proper financial scrutiny.
8. Defective evaluation of tenders by not considering conditions put forwarded by contractors.
9. Reasonability of rates not worked out.
10. Negotiations not carried out properly.
11. Tenders allotted to other-than the lowest contractor/ tender on flimsy ground.
12. High tenders accepted without any reasonable valid ground.
13. Tenders allowed to lapse on account of offlux of time.

ESSENTIAL ELEMENTS OF ESCALATION CLAUSE IN CONTRACTS -
BY SHRI A.C. PANCHDHARI, CHIEF TECHNICAL EXAMINER.

An engineering contract is an agreement entered between a contractor on one side and the owner (whether it is a government department or an individual) on the other side to construct a building, a road, a runway or any other civil engineering structure or for that matter any engineering edifices at a certain cost whether predetermined or according to a formula laid down in the contract. The agreement between the two parties can have various forms. Forms of agreement in common use are enumerated below: -

(1) Lump-sum contract:

In this case contractor offers to do the entire job within a certain time frame at a lump-sum figure. This is a very simple type of agreement. The job to be done is stated in detail and the contractor promises to complete it under all eventualities. Herein the owner has a definite idea about total cost involved and he partakes no risk at all. All risks are assumed by the contractor whether of changes in soil parameters, difficulties of execution etc.

(2) Item rate contract:

In this form owner frames a detailed estimate of the work to be done and invites offers to ascertain cost of a unit of work. The contractor quotes his price for carrying out a unit of work at a price. Herein owner ensures correctness of quantities as well as suitability of specification.

(3) percentage rate contract:

In a percentage rate contract, owner invites offer which is expressed as an overall uniform percentage of the estimated figure. This contract form is a variant of the item rate form. In case of item rate the quantity of work only is given for guidance of the contractor whereas in a percentage rate contract quantity of work along with owner estimate of cost is also given.

(4) Cost plus fixed fee contract:

In this form, the owner reimburses entire cost of construction and a fixed fee for the management services rendered by the contractor. There is a variant of this form in which instead of fixed fee for management services there is a scale laid down.

From lumpsum contract form which represents one end of the spectrum of the contracting document to the cost plus variable fee contract form which is the other end of the spectrum, there is substantial variation in the content and the nature of the contract. Whereas in the case of lumpsum contract all the risks are borne by the contractor and he does not reveal to the owner at any stage of the contract of the tender as to the basic assumptions which he has made while arriving at the total contract cost, in the case of item rate contract which is mid-way, the contractor gives slightly more detailed calculation for the individual items of the work, whereas at the other end of the spectrum with cost plus variable fee contract, it is owner who takes the full load of the variations in the prices and he pays to the contractor a fee for his management function.

Till 1970, when the price rise in a particular contract time of say of two to three years, was not spectacular, contractor was in a position to base more or less correctly his calculation on the current market data plus a speculation about rise in prices and earn a descent profit at the end of the contract.

In the past contractors were willing to submit tenders with firm price base as they could estimate with reasonable accuracy, the likely increase in the prices materials, equipment, labour and provide in their quotation for anticipated cost increase on these accounts. Of late, however, the variation in the cost of these inputs have become extremely unpredictable with the result that the contractors are no longer in a position to anticipate correctly and cater for the rise in the cost of construction. This change in the pricing phenomenon has brought about substantial changes in the contracting forms and processes and insertion of a clause whereby the contractor is paid increase in prices as could be prudently ascertained at the time of tendering has become a necessity. Before embarking upon the subject of escalation clause, discussion on the factors relating to price rise is necessary.

Reasons for the price rise can be many. Although price stability is a widely accepted objective for social and economic policies, absolute constancy of price is not practicable. Economic factors affecting the prices are fluctuations in aggregate demand and level of supply, employment and unemployment cycles and pattern of demand and supply of money. In addition to these factors political factor is also important in the price level fixation. Various other factors like trade union resistance to reduction

in wages, price support policies and manufacturer's resistance to fall in prices also give rise to fluctuation in the total price. The price could also be affected by various other reasons such as political atmosphere in the nation, international pressures, foreign trade restriction etc. Effect of political situation in international arena could be felt in nation where such changes are not taking place. For example political atmosphere in the Middle East has affected crude oil prices which in turn has affected the total price structure in India.

In recent times far reaching changes have taken place in wage structure of workers. Well organised trade unions of construction workers, constantly pressing for wage revision and other facilities in contractors, have financial implications. The Central and State Governments also notify minimum wages payable to a worker under the Minimum Wages Act for employment on building operation, construction and maintenance of road etc. Fair wages in addition to the minimum wages are also prescribed by competent authorities for various areas in their jurisdiction.

The basic rationale for a price escalation clause is to compensate the contractor for increase in construction costs during the currency of the contract which beyond the control of both the parties. It may be sometimes difficult to determine exactly the quantum of actual increase in cost as construction activities are multifarious in nature and many sub-contractors, traders, transporters piece workers and similar agencies are involved in the construction enterprises. The question as to whether the entire rise in the cost of labour and material should be payable to the contractor has also be examined. It is felt that if the

contractor is provided with a total safeguard in regard to escalation in prices, it may tend to weaken his will to bargain in the market and may not motivate him to minimise the cost differences. It is also considered that acceptance by the owner of the entire escalation in prices may tend to slacken the contractor in the performance of the contract as he would be fully covered for the price rise even if the contract was delayed. Therefore, in an escalation clause cent per cent burden of increase in cost is not borne by the owner and some part of the increase is expected to be absorbed by the contractor.

In the Central PWD standard contract form the following escalation clause is being provided:-

Clause 10 (c) - If during the progress of the works, the price of any materials incorporated in the works (not being a material supplied from the Engineer-in-Charge Stores) in accordance with clause 10 thereof) and/or wages of labour increases as direct result of the coming into force any fresh law or statutory rule or orders, (but not due to any changes in sales-tax) and such increase exceeds 10% of the price and/or wages prevailing at the time of the receipt of the tender for the work and the contractor thereupon necessarily and properly pays in respect of the material (incorporated in the works) such increased price and/or in respect of labour engaged on the execution of the work such increased wages than the amount of the contract shall accordingly be varied, provided always that any increase so payable is not in the opinion of the Superintending Engineer whose decision shall be final and binding, attributable to delay in the execution of the contract within the control of the contractor.

Provided however, no reimbursement shall be made if the increase is not more than 10% of the said prices/wages and if so the reimbursement shall be made only on the excess over 10% and provided further that any such increase shall not be payable if such increases has become operative after the contract or extended date of completion of the work in question.

If during the progress of the work the price of any material incorporated in the work (not being a material supplied from the Engineer-in-Charges' stores in accordance with the clause 10 thereof) and/or wages of labour is decreased as a direct result of the coming into force of any fresh law or statutory rule or order (but not due to any changes in sales-tax) and such decrease exceeds 10% of the prices, and/or wages prevailing at the time of the receipt of the tender for the work, government shall in respect of materials incorporated in the works (not being materials supplied from the Engineer-in-charge stores in accordance with clause 10 hereof) and/or labour engaged on the execution of the work after the date of coming into force of such law, statutory rule or order, be entitled to deduct from the dues of the contractor such amount as shall be equivalent to the difference between the price of the materials and/or wages as they prevailed at the time of the receipt of the tender for the work - minus 10% thereof and the prices of material and/or wages of the labour on the coming into force of such law, statutory rule or order.

The contractor shall for the purpose of this condition keep such books of accounts and other document as are necessary to show amounts of any increases claimed or reduction available and shall allow inspection of the same by a duly authorised representative of the government and further shall at the request of the Engineer-in-Charge furnish verified in such a manner as the Engineer-in-Charge may require any documents so kept and in such other information as the Engineer-in-Charge may require.

The contractor shall within a reasonable time of his becoming aware of any alternation in the prices of any such material and or wages of the labour give notice thereof to the Engineer-in-charge stating that the same is given pursuant to condition together with all the information thereof which he may be in a position to furnish.

This clause of the escalation as accepted by the Government has however not found favour with quite a large number of contractors. This has resulted in a separate pattern of price escalation clauses being made as a condition in the contractors offer and there are numerous instances where the price escalation condition as stipulated by contractors along with their quotations have been accepted instead of the standard format.

In many cases a formula approach has been adopted by the contractors which has the advantage of simplicity. It has to be understood at this juncture that the formula approach gives a compensation to the contractor without reference to the actual expenditure which he may have incurred on account of increased prices. This also obviates the necessity of auditing of actual cost which is not only cumbersome but may also lead to controversies.

Separate formulae can be derived to represent the elements of increase in cost of labour and in cost of materials and other commodities used in the construction. The fluctuations in their costs can be related to the appropriate indices compiled by the Ministry of labour and Industries, Reserve Bank, Ministry of Economic Affairs etc. from time to time. These indices no doubt have some limitations in as much as they encompass products and commodities apart from construction materials.

The variation in cost of labour could be related to either the index of wages or the consumer price index for the applicable area. Consumer price indices for workers are being published by the Ministry of labour for important Industrial Centres of the states and these indices could be used to represent the variation in cost of labour. Wherever the state Government has linked the minimum wage to the variation the consumer prices and minimum wages are fixed in such cases, the variation in cost of labour could be related to the index of wages also. The index of wages could be weighted average wage of unskilled, semi-skilled and skilled worker in appropriate proportion.

Price adjustments:

Payment to the contractor for the work done can be adjusted for the increase or decrease in cost of Labour, material, P.O.L. component in accordance with a formula. A sample formula wherein the contractor is compensated 75% of the increase/decrease in cost is given below:

(A) Labour:

Increase or decrease in cost of labour shall be calculated quarterly in accordance with the following formula:

$$V_1 = 0.75 \left[\frac{PL}{100} \times P \times \frac{L - L_o}{L_o} \right]$$

Where V_1 = Amount to be adjusted in the payment to the contractor for the work done during quarter under consideration.

PL = Factor as Labour component in the work

R = Value of work paid during the quarter under consideration.

L_o = Consumer price index for the month in which tenders were opened.

L = Consumer price index average for the three months under consideration.

(B) Materials:

Increase or decrease in cost of ancillary material and specific commodities shall be calculated quarterly in accordance with the following formula:

$$V_2 = 0.75 \frac{P_m}{100} \times R \times \frac{M - M_o}{M_o}$$

V_2 = Amount to be adjusted in the payment to the contractor for the work done during quarter under consideration.

R = Value of work paid for quarter under consideration.

P_m = Factor for material component in the value of the work.

M_o = Weighted average index number of wholesale prices for materials during the month in which tenders were opened.

M = Weighted average index for materials during the quarter.

- Weighted average index will be determined from the index number for

- (A) Name materials to be filled by project
- (B) authorities.
- (C) P.O.L.

Increase in cost of P.O.L. shall be calculated quarterly in accordance with the following formula.

$$V_3 = 0.75 \left\{ \frac{P_o}{100} \times R \times \frac{P - P_o}{P_o} \right\}$$

Where

V_3 = Amount to be adjusted in the payment to the contractor for work done during the quarter.

R = Value of work paid during quarter.

P_p = Factor for component of P.O.L.

P_o = Price for P.O.L. at nearest outlet during the month on which tenders were opened.

P = Price for P.O.L. during quarter

For purposes of this clause a particular brand of Lubricating oil is needed to be specified to represent group of various types of lubricating oils. While authorising payment under any type of escalation clause there are three parameters which have to be observed:

These parameters are discussed below:

First parameter to be seen while authorising the payment under the escalation clause is the contract provision. It has to be checked whether the contract provides for an escalation payment and if so under what circumstances and with what provision. If this care is not taken then the payment

authorised for escalation payment becomes an ex-gratia payment which in many cases the authority authorising the payment may not be competent to do so.

The second parameter is the case of escalation payment is *ad idem* i.e. ideas at the time of contracting being the same. It has to be seen that the payment which is being authorised is the real difference between the market price at the time of the tenders and at the time when the work is done. It is to be seen herein that the contractor has not delayed the work unnecessarily, nor he has dilated purchasing the particular item or the material. For example if the contractor has been given an assistance by way of advances, to purchase material etc. it is to be seen whether the contractor has really utilised it for the work or whether he has utilised that particular advance for the items which are not connected with the works. If this care is not taken, then the contractor will get double advantage. First advantage would be that the money which has been advanced for the work will be utilised for by the contractor in fulfilling his other engagements and secondly the advance payment will not have resulted in really expediting the work.

The third and important parameter is that of the time. As stated earlier if the contractor does not have a stake in the time element, he is not likely to bother about the same and any increase in prices if it is to be completely absorbed by the owner there would be no incentive left to the contractor to expedite the job. There have been many instances where the contracts have been lingering on for a very long time as the contractor chooses to save even the smallest amount which is really hurting this pocket, whereas

the bulk of the increase in prices he is transferring to the owner. Therefore it is necessary to be very vigilant about the time taken by the contractor in performance of the contract. The escalation in respect of petrol, oil etc. has been mis-utilised by the contractors to take away the entire equipment by road to some other work. Knowing fully well it is the owner who is going to pay for the transport of the equipment by way of increased charges for these. There have been many instances when this facility has been mis-used by over-drawing or over-claiming the oil from the particular petrol pump or the patrol outlet. It is therefore very important for the department to be vigilant in authorising payment in this regard. The contractor also should not get undue advantage of an inefficient machine being run by him which will consume lot of fuel and oil. In case of payment of escalation clause for the labour wages increase, it has to be ensured that the contractor is not claiming unnecessary payment for the escalation clause without payment to labourers their dues. For this purpose, a review of the contractor's record may be necessary. In addition, the contractor should also not take undue advantage by inflating the total number of persons employed on the job. For each job certain amount of labour is needed at an optimum. On this optimum there could be slight variation on plus or minus side, yet there cannot be a very high percentage of labour put on an item in order to demand the escalation. In this care is not taken, then the contractor can inflate his entire labour record and get away with the additional amount of money.

Once the payment for escalation is made, it is not possible to recover it on the basis that there has been some mistake in understanding. Payment once made is an agreed payment and hence cannot be disputed.

One such case wherein such unnecessary payment has been authorised is discussed below:

In the case of a multistoreyed building, the contract between the parties stipulated that no escalation amount payable on account of increase in price. This was reiterated at 2 or 3 places in the agreement.

The contractor was expected to arrange for steel and cement from the market on the basis of authorisation given by the builder. The contractor at that time of entering into the contract, had asked for 10% as mobilisation advance and this amount was quite substantial in the neighbourhood of Rs. 13 lakhs.

During execution of the work for some time there no cement available and the contractor then put in a claim on the basis of a formula approach that he should be paid escalation of Rs. 10 lakhs of rupees. In this particular case, it was not checked whether the contractor has utilise fruitfully the advance given to him; the contract condition was also not studied properly with the effect that the contractor was paid escalation of Rs. 10 lakhs. No detail as to how this amount was worked out were available.

The escalation clause has now become an inevitable part in the operation of engineering contract on account unstable condition of market prices and it is necessary it is operated in a fair and equitable manner without jeopardising the interests of either owner or the contractor.

CORRUPTION IN ADMINISTRATION AND VIGILANCE

By: U.C. Agarwal

Central Vigilance Commissioner

Public administration in India is all pervasive. Its involvement with the people is total. Although prior to independence, maintenance of law and order was the primary task of the alien Government, its role expanded considerably with the advent of democracy and independence. The people of India constituted India into a sovereign democratic Republic and assigned to the new state the task of bringing about socialism. The state has, in addition to maintenance of peace and tranquility, taken upon itself the task of planned economic development of the country.

For such an economic, social and political arrangement, the state had naturally to play a great role in the life of the people. Public administration had to carry out these new and challenging tasks. Considering the variety and magnitude of the tasks, the size of the public administration machinery and its personnel had necessarily to be gigantic.

It is the common belief that due to poor or dishonest management of public sector undertakings in the core areas, like power generation, coal-mining, steel making or rail and road transportation, the production costs are unreasonably high and productivity unduly low. Consequently, prices have to be raised every now and then to make up the losses, yet losses go on mounting due to unchecked malpractices and corruption. It is like storing water in a leaking vessel. The prevailing malpractices like leakages of revenue, clandestine misappropriation, pilferage, or wastage of public property and asset, bestowing of gifts and favours to all kinds of people at public expense are undoubtedly putting a heavy burden on the honest workers and honest tax-payers.

Source: INFA, No.128, Vol.5, 1986.

There are numerous causes for this fall in the standards of integrity and efficiency of our public administration. A few important ones are: firstly, the general social climate has become highly materialistic and no scrupled or othical values worry the people in going ahead. The emphasis appears to be more on "making" rather than "earning" money. There are increasing number of cases of vulgar display of wealth by the socially high-ups in their style of living, housing and social functions.

Secondly, the temptation for corruption is aggravated on account of inadequate remuneration of Government and public sector employees at all levels. The salary scales and other perquisites have not kept pace with the price rise and inflation. Naturally, when there is, on the one hand, ample opportunities for extra income through corruption, growing number of Government servants tend to succumb to temptation. This is further facilitated in the absence of adequate external vigilance or much social stigma. Commission agents also appear on the scene to get a share. They also prevent direct exposure of the bribe takers and bring some order in fixing workable rates in the free market of corruption. Fixed rates of bribery become known cost factors for any one to decide whether to avail of any Government benefit, facility, permit or contract in fact, practically for all kinds of dealings in public offices.

Thirdly, in a democratic set up corrupt elements in public services try and find persons of power and influence, inside or outside Government to shield and protect them. The internal code of conduct and rules of discipline of Government employees get seriously impaired due to outside interference in personnel management; undesirable pulls and pressures are brought about in matters of postings, transfers and promotions. These, no doubt, disturb the internal chain of command and control. Consequently, a feeling develops among public servants that good work hardly gets rewarded and bad conduct seldom gets punished if there is some god-father to protect.

There was a time when corruption and malpractices were confined to few people at the lower levels, and in a few departments only. Unfortunately, with the spread of Governmental activities, fall in the real wages of Government employees, outside interference in administration and consequent dilution of the chain of command and general decline in moral values, one cannot say with confidence now, that there are many or any area of public administration which are free from malpractices or corruption. The disease has spread with varying degrees of intensity, practically to all levels and to all departments of Government and its public sector enterprises. However, in spite of this prevailing gloom, fortunately, it is also a fact that there are still a large number of people at all levels and in all departments and in the public sector who still perform their duties with sincerity, dedication and honesty. In spite of the general decline in values their conduct remains beyond reproach and they provide hope and light in the darkness. With such people around, certainly all is not yet lost. Even though the percentage of honest people in the vast public administration machinery may not be as large as one would like, yet they are able to make the system move, however, slowly.

It is one of the important functions of the vigilance machinery in administration and the Vigilance Commission to protect such honest individuals against false allegations, arbitrary action and harassment by the interested parties. It is unfortunate that the number of false and motivated complaints is so large that the task of catching the really guilty ones becomes very difficult. It is not uncommon to find the corrupt public servants mounting campaigns against the honest ones if they happen to come in their way of money making. They also easily enlist the support and cooperation of outside beneficiaries to harass and harm the honest public servants.

One has, therefore, to exercise due care and caution before investigating complaints of corruption or misconduct coming from irresponsible quarters. The general reputation of the concerned public servant and his record of service has to be taken due note of before he is subjected to any enquiry. It is for this reason that anonymous complaints, where the complainant does not disclose his identity, are generally not looked into unless there are easily verifiable facts.

Even though the people have learnt to live with corruption, as they feel helpless and find no alternative, it is not in the long term interest of our society and the state to tolerate the existence of this fatal disease. Corruption and malpractices in Government machinery and the public sector undertakings will defeat the very purpose of our planning and seriously retard the economic progress of the people. The task of bringing about a just, social and economic order desired by the illustrious founding fathers of our constitution will be frustrated. The greater danger is that we may slip into a situation where might will be right and there will be no effective laws to regulate and enforce good conduct amongst public functionaries. We will revert to the law of the jungle, making life short, nasty and brutish. Such chaos may ultimately end in fearful social and political disorder and turmoil.

If things are not checked quickly, people may get fed up with the present public administration machinery and may destroy it. No state institution, once it ceases to be useful, and becomes a source of exploitation or harassment, however, seemingly powerful it may be, can survive the wrath of the people. Such an institution is bound to be cast aside, like any waste material, by the currents of history. This has happened in the past to many social and political institutions in many countries, where these institutions became useless parasites. We must, therefore, foresee these gloomy prospects and take urgent corrective measures to make our

administration both efficient and clean and must not allow it to become a burden on the people.

Happily, of late, this awareness has come and some corrective measures have been initiated to effectively deal with the problem of corruption in administration. These measures relate to areas of preventive, detective and punitive vigilance. Action plan, in these three areas, is briefly as below:

Preventive Vigilance: a) simplification of rules and procedures; b) reducing the areas of discretion and patronage; c) de-regulation where possible to reduce the points of corruption and harassment to the public; d) introduction of public information and assistance counters in departments and places having public dealings; e) set up of redressal of public grievances machinery in each Ministry; f) systematic and surprise inspections by senior officers; g) monitoring disposal of vigilance cases with a view to checking delays; h) curbing outside interference in administration and personnel management; and i) improving wages and service conditions of public servants.

Surveillance and detection: a) greater surveillance and intelligence in corruption prone areas, particularly at public contact points by strengthening the vigilance machinery, where necessary. b) closer watch on officials of doubtful integrity by vigilance machinery; c) on a selective basis, movable/immovable assets of persons of doubtful integrity to be checked and verified periodically; and d) as a follow-up action to c) above, traps and raids to be organised, where necessary.

Deterrent punitive action: a) investigation of vigilance cases to be speeded up according to a time-bound schedule; b) procedure for disciplinary action to be improved for speedier finalisation of vigilance cases and deterrent punishment awarded; c) provision for summary trial by courts in cases of corruption and provision for

deterrent punishment; d) legislative measures for confiscation of ill-gotten wealth; e) provision for premature retirement of persons of doubtful integrity to be enforced more rigorously to weed out corrupt elements; f) close monitoring of all anti-corruption measures; and g) wide publicity of punishment awarded to guilty persons.

Greater emphasis is being laid on preventive vigilance as admitted prevention is better than cure. This is a more positive approach to vigilance in the sense that root-cause of malpractices and corruption need to be identified in different areas of administration and appropriate preventive action taken by way of improvement of the system itself so that such malpractices do not occur. The scope for mischief needs to be completely eliminated or at least considerably reduced. The existing rules, procedures and practices are being reviewed by each Ministry in order to see that ambiguities are removed and unnecessary paper requirements are done away with.

The whole intention is to ensure that people do not have to run to Government offices for every little work. To the maximum extent possible, the need for personal contact with the Government machinery has to be reduced. In certain areas, use of computers would also eliminate scope for corruption, like reservation of seats in the railways and airlines. Banking and insurance services may also go in for greater computer use to be able to supply quicker information and render more efficient customer service.

Contd...7/-

One single important factor responsible for corruption is the involvement of Government on a very large scale in the areas of socio-economic development. Many of these Governmental activities may not be proving as useful or beneficial as was the expectation. A review of such Governmental activities need to be initiated to see what items of work could be given up without any serious departure from the main goals of socio-economic development. If this task is seriously undertaken, it may at least prevent further expansion of Government machinery if not its curtailment. Will it not be better to do less work more efficiently and honestly with beneficial results rather than take up too much of multi-farious work and do it perfunctorily, causing waste of public money and harm and annoyance to the people? A more pragmatic approach to the role of the state and spread of Governmental activities is, therefore, called for as long-term measure for prevention of corruption.

We have got to derive lessons from our own experience that there are after all limits to useful economic and welfare work by Governmental machinery. It need not poke its nose in every thing for the simple reason that more it tries to do, more it becomes counter productive. All the schemes that may glitter on paper, may not turn to be gold in the hands of Government. Another important cause of corruption in public services is the poor remuneration of public servants of all categories. The Fourth Pay Commission is presently considering this question and may suggest suitable improvements in the pay-scales and other service conditions, including retirement benefits and pension of Government employees so that temptation for corruption due to inadequate wages is reduced. Revised pay-scales etc. of Government servants can later be suitably adopted for public sector employees. Inadequate wages is again due to employment of a very large army of people and hence the incapacity to pay them well.

The number of Central Government employees alone, of all categories, would be about 5 million. To pay them on the average of Rs. 100 p.m. extra any time would cost the public exchequer about Rs. 600 crores additionally a year. This figure of additional cost would be staggering if we take into account the Central and State public sector employees as also state and local body employees. All these do suggest the need for a more critical review of the expansion of public administration in different fields. We must cut our cost according to the cloth available.

Another important factor leading to corruption in the Government machinery is the gradual decline in discipline among all categories of employees. It is hoped that outside interference in administration and personnel management will be removed in accordance with the new strategy and the normal chain of command restored. This will make the internal and external vigilance agencies more effective for preventive as well as punitive action. An important requirement of clean and efficient administration is to ensure internal discipline among public servants by giving requisite power and authority to senior functionaries at different levels of administration. There has to be fear as well as a sense of responsibility in doing one's work sincerely and honestly.

In a large governmental organisation, corruption and malpractices cannot be effectively curbed on a long-term basis by any single centralised agency, however powerful it may be. These tasks have to be carried out by equally effective internal departmental agencies at different levels, manned by officers of proven integrity. They have also to be trusted to be trustworthy. Their effectiveness will greatly depend on eliminating outside interference.

Another long-term measure to deal with corruption in administration and public life will be to take suitable measure to discourage and condemn vulgar display of private wealth and ostentatious living by any one. Such displays of wealth should be brought within the purview of punishable social crime. Needless to say that the top echelons of society and Government, public servants and public men, leaders of society, business and industry, have to set example living and high thinking. By personal example of good conduct, they could bring about a change in the prevailing value system for the better. Higher they are, greater is their responsibility to keep the moral environment cleaner. General social environment does affect functioning of public services as well.

Again since politics and administration are inter-linked of corruption among public servants without enforcing adherence to correct values among public men i.e. all those who hold any post or public office or are in a position to exercise any influence on public functionaries. For this, our law for prevention of corruption may have to be given a fresh look so as to expand its scope and strengthen its penal provisions. Any abuse of public office or influence for private gain has to be publicly condemned and penalised. Ill-gotten wealth should also be confiscated fully after due and fair enquiry.

For immediate action, some aspects of preventive vigilance need to be highlighted. These are setting up of effective machinery for redressal of public grievances and regular monitoring of disposal of cases at different levels by senior officers. Normal inspections of lower field formations and officers have greatly suffered due to good deal of waste of their time in less productive work and in running around. There is also a growing craze for media attention and publicity among public servants. This publicity mania among all public servants

must be frowned upon. Public servants craving for press publicity often turn out to be stunts and nine-day wonders. Anonymity and silent work are the best virtues of any honest and efficient public servant.

Long tenure in higher supervisory posts are also necessary for planned action. Sensitive holders of posts/seats at the cutting edge level need, however, to be rotated at comparatively shorter intervals. Some of these administrative measures have been initiated by different Central Ministries to bring about better morale, cleanliness and efficiency in administration. However, a good deal more remains to be done for better results.

In brief, the strategy being followed for prevention of corruption in public services may be summarised as below:

(a) reduce its scope by - (i) review of Governmental activities to eliminate unnecessary work; (ii) simplification of rules, procedures and practices and general system improvements; and (iii) better supervision, inspections and monitoring.

(b) reduce temptation by - upgradation of pay-scales and other service conditions suitably. (The Fourth Pay Commission is looking into this aspect).

(c) better policing and vigilance to - (i) exercise greater check on corruption-prone areas and individuals; (ii) identify hard-core corrupt elements; and (iii) take exemplary punitive action against habitual corrupt elements by removal and dismissal from service.

Needless to say that corruption among public servants, in fact, in case of holders of any public office, should be considered as a social crime and should be more severely dealt with than ordinary crime. The problem of corruption is, indeed, very grave and calls for urgent remedial action on all fronts. Both short-term and long-term measures in the preventive, detective and punitive areas need urgent attention to check any further spread of corruption in our administration. One must recognise that power corrupts and absolute power corrupts absolutely and, therefore, eternal vigilance on the conduct of all public men and officials exercising any state power through any of its organs, is essential to keep them on the right path. Good conduct of all public functionaries has a bearing on the good conduct of Government and public sector employees, since all work together for the main purpose of bringing about a just, social, economic and political order for the benefit of the people of India.--INFA

